

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

IN RE:

AOK CONSTRUCTION, LLC

Debtor.

KIRBY-SMITH MACHINERY, INC.,

Plaintiff,

v.

**AOK CONSTRUCTION, LLC and
CONTINENTAL ENERGY SERVICES,
LLC,**

Defendants.

-and-

BANK OF AMERICA, N.A.

Intervenor.

Case No. 09-34419

**United States Bankruptcy Court,
Southern District of Texas
(Chapter 7)**

Adv No. _____

Civ. Case No. CJ-2009-3493

NOTICE OF REMOVAL

Intervenor, Bank of America, N.A. (the “Bank”), hereby gives notice of the removal of the captioned action pursuant to 28 U.S.C. §§ 1334 and 1452, WDOK LR 81.3 and Fed. R. Bankr. P. 9027, from the District Court within and for Oklahoma County, State of Oklahoma, to the United States Bankruptcy Court for the Western District of Oklahoma. As grounds for removal, the Bank states as follows:

RELEVANT FACTUAL BACKGROUND

1. The Bank is the successor to LaSalle Bank National Association (“LaSalle”) as administrative agent and is one of the lenders in connection with a senior secured credit facility

(the “Loan”) governed by the terms of an Amended and Restated Credit Agreement, dated as of March 3, 2008 (the “Credit Agreement”), by and between defendant Continental Energy Services, LLC (“CES”) as borrower, LaSalle as administrative agent, issuing lender and lender, and Amegy Bank National Association (“Amegy”) and Compass Bank (“Compass”) as lenders.

2. The Credit Agreement was executed as an amendment to and restatement of an existing senior secured credit facility evidenced by a Credit Agreement dated March 9, 2008, by and between LaSalle as administrative agent, issuing lender, and lender, CES as borrower, and Compass and Amegy as lenders, for a credit facility up to the sum of \$42,000,000. The credit facility, which is the subject of the Credit Agreement, consists of existing and future indebtedness under term loans and revolving loans up to an aggregate amount in excess of \$47,500,000 (the outstanding amount of which is referred to collectively as the “Indebtedness”).

3. Pursuant to the terms of the Guaranty and Collateral Agreement dated as of March 9, 2007 (the “Security Agreement”), the Indebtedness is secured by among other things, (i) all of the personal property of CES and any proceeds from the sale or disposition of such property, and (ii) all of the personal property owned by, among other parties, defendant AOK Construction, LLC (“AOK”), and any proceeds from any sale or disposition of such personal property. The Bank’s security interest in the personal property of AOK, as referenced above, was perfected on or about March 14, 2007, by the filing of a UCC-1 financing statement with the Oklahoma Secretary of State.

4. The Bank agreed to allow CES and its affiliates (including AOK) to sell a portion of the collateral securing the Indebtedness in an advertised auction that took place on May 19, 2009, provided that all of the net proceeds of such auction were paid to the Bank to be applied to

the Indebtedness. CES, with the Bank's consent, engaged Richie Bros., an internationally known auction company, to advertise the auction and to conduct the auction.

5. The property sold at the May 19, 2009, auction consisted primarily of vehicles and equipment owned by CES's subsidiaries, including AOK. With the exception of approximately 9 vehicles, which are subject to a first lien held by First National Bank and the proceeds from the sale of which will be paid to First National Bank, all of the property that was sold is the Bank's collateral, which secured the Indebtedness pursuant to the terms of the Security Agreement. On information and belief, approximately one half of the property sold by Richie Bros. on May 19, 2009, was property owned by AOK, and the remainder was owned by Continental Energy Leasing, LLC, who is not a party to the captioned action. As of May 18, 2009, the total amount of the Indebtedness, after allowing all just and lawful offsets, payments and credits, and exclusive of accrued but unpaid interest, was \$34,500,000.

RELEVANT PROCEDURAL BACKGROUND

6. Plaintiff, Kirby-Smith Machinery, Inc. ("Kirby-Smith"), commenced the captioned action (the "State Court Action") on April 13, 2009, by filing a petition in Case No. CJ-2009-3493 in the District Court in and for Oklahoma County, State of Oklahoma (the "State Court"). On April 14, 2009, Kirby-Smith filed a First Amended Petition (the "Petition"), pursuant to which Kirby-Smith seeks a money judgment of \$730,683.24 against AOK and CES.

7. On May 1, 2009, Kirby-Smith filed a *Notice of Prejudgment Garnishment*. Therein, Kirby-Smith sought issuance by the Clerk of the State Court of a pre-judgment garnishment summons to be served on Richie Bros ("Summons"). The purported purpose of the Summons is to attach proceeds that Richie Bros. received from the sale of the Bank's collateral at the May 19, 2009, auction. As noted, only approximately one half of the property sold at auction consisted of AOK's property. None of defendant CES' property was sold at the auction.

8. On May 28, 2009, the State Court entered an *Agreed Order Authorizing Issuance of Plaintiff's Prejudgment Garnishment Without An Undertaking* (the "Agreed Order"). Pursuant thereto, the State Court issued the Summons on May 28, 2009, and served the Summons on Richie Bros. The Summons required Richie Bros., within ten (10) days of service of the Summons on it, or June 9, 2009, to pay to Kirby-Smith's attorney the sum of \$730,638.24, together with costs of the principal action and costs of the garnishment proceeding (the "Garnished Proceeds").

9. On June 5, 2009, the Bank filed an *Unopposed Motion to Intervene* in the State Court Action for the purpose of asserting its interest in the Garnished Proceeds. On June 17, 2009, the State Court entered an *Agreed Order Granting Bank of America's Motion to Intervene and Authorizing Disbursement of Garnished Funds*. Pursuant to the Agreed Order, Richie Bros. was authorized and directed to disburse the Garnished Proceeds to the Bank subject to further orders of the State Court.

10. On June 10, 2009, Richie Bros. filed its Answer to the Summons, stating that it was holding the Garnished Proceeds (in the amount of \$783,000) and had been directed by AOK and Kirby-Smith to submit same to the Bank. The Garnished Proceeds are currently held in a segregated account at the Bank pending further order of the State Court.

11. On June 26, 2009, AOK filed a voluntary petition under chapter 7 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of Texas. David J Askanase was appointed as chapter 7 trustee. On June 29, 2009, a Suggestion of Bankruptcy was filed in the State Court.

BANKRUPTCY JURISDICTION

12. As set forth above, at issue in the State Court Action is whether the Bank, pursuant to its security interest, Kirby-Smith, pursuant to its pre-judgment garnishment lien, or AOK, as the owner of the collateral sold by Richie Bros. at auction, has a superior interest in the Garnished Proceeds. Resolution of this issue constitutes a core proceeding, as it involves a determination of property of AOK's bankruptcy estate, the administration of AOK's bankruptcy estate, the allowance or disallowance of claims against the estate, and the determination of the validity, extent and priority of the parties' various lien and interests in the Garnished Proceeds. *See* 28 U.S.C. §§ 157(b)(2)(A), (b)(2)(B), (b)(2)(K).¹

13. Therefore, the State Court Action "arises in," or alternatively, is "related to" the chapter 7 bankruptcy case of AOK and is subject to this Court's bankruptcy jurisdiction, as authorized by 28 U.S.C. § 1334(b) (stating that federal district courts have "original jurisdiction of all civil proceedings ... arising in or relating to cases under title 11"). Cases subject to such jurisdiction are removable under the authority of 28 U.S.C. § 1452(a) ("A party may remove any claim or cause of action ... to the district court for the district where such civil action is pending, if such district court has jurisdiction of such claim or cause of action under section 1334 of this title").

14. Unanimous consent of all parties to the State Court Action is not required for removal under 28 U.S.C. § 1452. *E.g., Creasy v. Coleman Furniture Corp.*, 763 F.2d 655 (4th Cir. 1985). Accordingly, this Notice of Removal is timely and properly filed pursuant to Fed. R. Bankr. P. 9027(a)(3).

¹ To the extent that this Court determines that the State Court Action is a non-core proceeding, the Bank consents to the entry of final orders and judgment by a bankruptcy judge.

NOTICE

15. Pursuant to Rule 9027(b) of the Federal Rules of Bankruptcy Procedure, the Bank is serving counsel for AOK, CES and Kirby-Smith with this Notice of Removal per the attached Certificate of Service. Additionally, pursuant to Fed. R. Bankr. P. 9027(b), the Bank has prepared and filed a Notice of Filing of Removal with the Clerk of the State Court.

16. The filing of the Notice of Removal operates to effect the removal of the State Court Action pursuant to Rule 9027(c) of the Federal Rules of Bankruptcy Procedure.

PROCESS AND PLEADINGS

17. The pleadings filed to date in the State Court Action are attached hereto as **Exhibits 1-12** and incorporated herein by reference.

RESERVATION

18. No admission of fact, law, or liability is intended by this Notice of Removal, and all defenses, motions, counterclaims and pleas are expressly reserved.

WHEREFORE, Kirby-Smith is hereby notified to proceed no further in the State Court Action.

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Dated this 8th day of July, 2009.

Respectfully submitted:

**HALL, ESTILL, HARDWICK, GABLE,
GOLDEN & NELSON, P.C.**

By: /s/ Larry G. Ball
Larry G. Ball, OBA #12205
Seth A. Day, OBA #20670
100 North Broadway, Suite 2900
Oklahoma City, Oklahoma 73102-8865
Telephone: (405) 553-2828
Facsimile: (405) 553-2855

-and-

Thomas A. Creekmore III, OBA #2011
John T. Richer, OBA #19554
320 South Boston, Suite 200
Tulsa, Oklahoma 74103-3706
Telephone: (918) 594-0400
Facsimile: (918) 594-0505

COUNSEL FOR BANK OF AMERICA, N.A.

CERTIFICATE OF SERVICE

I, John T. Richer, certify that on the 8th day of July, 2009, I served a copy of the Notice of Removal by facsimile and First Class Mail, postage prepaid, to the following:

Clay P. Booth
Kline and Kline, et al.
720 N.E. 63rd Street
Oklahoma City, OK 73105

James K. Larimore
Durbin, Larimore & Bialick, PC
920 North Harvey
Oklahoma City, OK 73102

Warren F. Bickford
Fellers, Snider, et al.
100 N. Broadway, Ste. 1700
Oklahoma City, OK 73102

/s/ Larry G. Ball



W04-3443
Page 8 of 59
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**IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA**

Kirby-Smith Machinery, Inc.,

Plaintiff,

V.

**AOK Construction, LLC, and
Continental Energy Services, LLC,**

Defendants.

FILED IN THE DISTRICT COURT
OKLAHOMA COUNTY, OKLA.

APR 13 2009

PATRICIA PRESLEY, COURT CLERK
by [Signature]
DEPUTY

Case No.

CJ - 2009 - 3493

PETITION

FIRST CAUSE OF ACTION

Plaintiff, Kirby-Smith Machinery, Inc., an Oklahoma corporation (“Plaintiff” or “Kirby-Smith”), for its First Cause of Action against Defendant, AOK Construction, LLC, a Oklahoma limited liability company (“AOK Construction”), states:

1. On or about June 19, 2007, a certain credit application, which is attached hereto as Exhibit "A," was signed and delivered to Kirby-Smith pursuant to which Kirby-Smith opened a commercial credit account in the name of AOK Construction for the purpose of charging the rental of cranes, heavy equipment, and industrial equipment from Kirby-Smith and charging parts, goods, labor, and services from Kirby-Smith.
2. Based on said commercial credit account and as set forth on Kirby-Smith's statement of account, which is attached hereto as Exhibit "B," Kirby-Smith rented a certain heavy equipment and accessories therefor; provided certain parts and goods; and provided repair services, including related parts, goods and labor.
3. AOK Construction is indebted to Kirby-Smith as set forth on Kirby-Smith's statement of account, Exhibit "B," for equipment rental charges and other charges related thereto,

including accessories, taxes, delivery fees, parts, goods, and services; for parts and goods; and for repair services, including related parts, goods and labor, in the sum of \$730,683.24, with prejudgment and postjudgment interest on said sum at the contract rate of 18.00% per annum from and including April 1, 2009, until paid, and for all costs, accrued and accruing, including a reasonable attorneys' fee for Kirby-Smith's attorneys, which account, Exhibit "B," is correct and which amounts are just, due, and owing by AOK Construction to Kirby-Smith.

WHEREFORE, Plaintiff, Kirby-Smith Machinery, Inc., an Oklahoma corporation, prays judgment against Defendant, AOK Construction, LLC, an Oklahoma limited liability company, on its First Cause of Action in the sum of \$730,683.24, with prejudgment and postjudgment interest on said sum at the contract rate of 18.00% per annum from and including April 1, 2009, until paid; for all costs, accrued and accruing, including a reasonable attorneys' fee for the plaintiff's attorneys; and for such other and further relief as this Court deems just and equitable.

SECOND CAUSE OF ACTION

Kirby-Smith, for its Second Cause of Action against Defendant, Continental Energy Services, LLC, a Delaware limited liability company ("Continental"), states:

4. Kirby-Smith adopts, realleges, restates and incorporates herein by reference all statements and allegations of Kirby-Smith's First Cause of Action as if fully set forth herein.

5. Continental took the place of, and the assets of, AOK Construction. That there was a consolidation or merger of AOK Construction and Continental.

6. Continental agreed to assume and pay the indebtedness referred to above to Kirby-Smith.

7. Continental was, and is, a continuation of AOK Construction.

8. AOK Construction's transfer of all its property, real and personal, to Continental was fraudulent within the meaning of the Oklahoma Fraudulent Transfer Act, 24 O.S. §§ 112 to 123.

9. Continental is the alter ego of AOK Construction.

WHEREFORE, Plaintiff, Kirby-Smith Machinery, Inc., prays judgment against Defendants, Continental Energy Services, LLC, a Delaware limited liability company, on its Second Cause of Action in the sum of \$730,683.24, with prejudgment and postjudgment interest on said sum at the contract rate of 18.00% per annum from and including April 1, 2009, until paid; for all costs, accrued and accruing, including a reasonable attorneys' fee for the plaintiff's attorneys; and for such other and further relief as this Court deems just and equitable.

THIRD CAUSE OF ACTION

Kirby-Smith, for its Second Cause of Action against AOK Construction and Continental, states:

10. Kirby-Smith furnished valuable parts, goods, labor, and services to AOK Construction and Continental with a reasonable expectation of being compensated.

11. AOK Construction and Continental knowingly accepted the benefit of Kirby-Smith's parts, goods, labor, and services.

12. AOK Construction and Continental would be unfairly benefitted by receiving Kirby-Smith's parts, goods, labor, and services if no compensation were paid to Kirby-Smith.

13. The fair value of the parts, goods, labor, and services that Kirby-Smith furnished to AOK Construction and Continental is the sum of \$730,683.24, with prejudgment and postjudgment interest on said sum at the rate of 18.00% per annum from and including April 1, 2009, until paid, and for all costs, accrued and accruing, including a reasonable attorneys' fee for Plaintiff's attorneys, which amounts are just, due, and owing by AOK Construction and Continental to Kirby-Smith.

WHEREFORE, Plaintiff, Kirby-Smith Machinery, Inc., an Oklahoma corporation, prays judgment against Defendants, AOK Construction, LLC, an Oklahoma limited liability company, and Continental Energy Services, LLC, a Delaware limited liability company, on its Third Cause of Action in the sum of \$730,683.24, with prejudgment and postjudgment interest on said sum at the rate of 18.00% per annum from and including April 1, 2009, until paid; for all costs, accrued and accruing, including a reasonable attorneys' fee for the plaintiff's attorneys; and for such other and further relief as this Court deems just and equitable.

FOURTH CAUSE OF ACTION

Kirby-Smith, for its Fourth Cause of Action against AOK Construction and Continental, states:

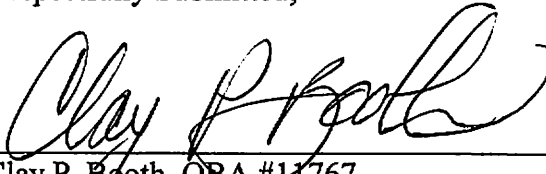
14. AOK Construction and Continental voluntarily accepted the benefits of Kirby-Smith's offer to obtain parts, goods, and services from Kirby-Smith when AOK Construction and Continental knew or should have known that Kirby-Smith made the offer intending to receive payment therefor.

15. As AOK Construction and Continental knew or should have known, and as shown by the statement of account, Exhibit "B," the specific benefit that Kirby-Smith intended to receive from AOK Construction and Continental is the sum of \$730,683.24, with prejudgment and postjudgment interest on said sum at the rate of 18.00% per annum from and including April 1, 2009, until paid, and for all costs, accrued and accruing, including a reasonable attorneys' fee for Plaintiff's attorneys, which amounts are just, due, and owing by AOK Construction and Continental to Kirby-Smith.

WHEREFORE, Plaintiff, Kirby-Smith Machinery, Inc., an Oklahoma corporation, prays judgment against Defendants, AOK Construction, LLC, an Oklahoma limited liability company, and

Continental Energy Services, LLC, a Delaware limited liability company, on its Fourth Cause of Action in the sum of \$730,683.24, with prejudgment and postjudgment interest on said sum at the rate of 18.00% per annum from and including April 1, 2009, until paid; for all costs, accrued and accruing, including a reasonable attorneys' fee for the plaintiff's attorneys; and for such other and further relief as this Court deems just and equitable.

Respectfully Submitted,



Clay P. Booth, OBA #11767

- for the firm -

KLINE, KLINE, ELLIOTT & BRYANT, P.C.

720 NE 63rd Street

Oklahoma City, OK 73105-6405

Telephone: (405) 848-4448

Facsimile: (405) 842-4539

Attorneys for Plaintiff, Kirby-Smith Machinery, Inc.

ATTORNEYS' LIEN CLAIMED

Kirby-Smith Machinery, Inc. v. AOK Construction, LLC, et al.
Oklahoma County District Court
Petition

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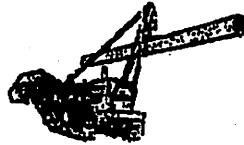
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09/30/2008 TUE 13:59 FAX 918 429 1342 AOK Construction

918429
Credit Ap Update

AOK CONSTRUCTION, LLC



COMPANY NAME: AOK CONSTRUCTION, LLC
MAILING ADDRESS: P.O. BOX 306 MCALISTER, OK 74502
SHIPPING ADDRESS: 9055 E. HWY 270, MCALISTER, OK 74502
OWNER'S NAME: CONTINENTAL ENERGY SERVICES
TYPE OF BUSINESS: UNDERGROUND PIPELINE
TAX ID#: 73-1597809 **PO REQUIRED:** YES
BANK NAME: LABALLE BANK N.A.
ADDRESS: 136 S LABALLE CHICAGO, IL 60603
TELEPHONE #: 312-904-9028 **CONTACT:** SEAN SILVER

CREDIT REFERENCES:

KIRBY SMITH MACHINERY
PO BOX 270360
OKC, OK 73137
TELEPHONE: 405-495-7820
FAX: 405-757-5973

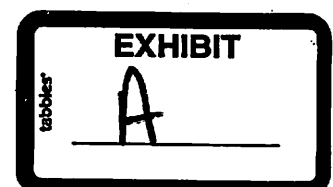
NAPA AUTO
PO BOX 67
MCALISTER, OK 74501
TELEPHONE #: 918-423-4026
FAX #: 918-423-4763

WESTERN SUPPLIES
BOX 561
WICHITA FALLS, TX 76307
TELEPHONE #: 840-565-3401
FAX #: 840-565-7692

WARREN CAT
DEPT 1844
TULSA, OK 74182
TELEPHONE #: 918-527-4600
FAX #: 918-500-2392

PO Box 306 • 9055 E. Highway 270 • McAlester, OK 74502 • D18 429-1341 • Fax 918-429-1342
aokconstruction11@earthlink.net

Dreg D. Karpinsky - Pres.





KIRBY-SMITH MACHINERY, INC.



Customer 918429
AOK CONSTRUCTION, L.L.C.
April 10, 2009
Balance \$730,683.24

	Date	Invoice	Br	SD	Charges	Adjustments	Payments	Total
1.	11/30/07	SC032120	001		58.86			58.86
2.	12/06/07	R43642	002	R	8,534.54			8,534.54
3.	12/12/07	R43810	002	R	8,138.78			8,138.78
4.	12/25/07	R44185	002	R	4,883.27			4,883.27
5.	12/25/07	R44210	002	R	5,371.59			5,371.59
6.	12/31/07	SC032397	001		741.06			741.06
7.	1/22/08	R45179	004	R	4,812.42			4,812.42
8.	1/22/08	R45180	002	R	4,730.57			4,730.57
9.	1/22/08	R45181	002	R	6,348.24			6,348.24
10.	1/31/08	SC032651	001		1,653.81			1,653.81
11.	2/05/08	R45641	002	R	6,369.95			6,369.95
12.	2/29/08	SC032900	001		1,803.62			1,803.62
13.	3/31/08	SC033140	001		2,213.92			2,213.92
14.	4/30/08	SC033373	001		12,883.42			12,883.42
15.	5/17/08	T62111	002	C	4,216.43			4,216.43
16.	5/29/08	R49939	002	R	8,301.55			8,301.55
17.	5/29/08	R49957	004	R	4,851.00			4,851.00
18.	5/31/08	SC033621	001		14,999.29			14,999.29
19.	6/30/08	SC033859	001		4,488.03			4,488.03
20.	7/31/08	R52206	002	R	17,459.21	11,639.48-		5,819.73
21.	7/31/08	SC034081	001		5,732.59			5,732.59
22.	7/31/08	U52529	002	W	2,344.79			2,344.79
23.	8/05/08	R52316	002	R	4,883.27			4,883.27
24.	8/26/08	R53060	002	R	2,194.60			2,194.60
25.	8/31/08	SC034320	001		10,666.69			10,666.69
26.	9/05/08	R53603	002	R	162.78			162.78
27.	9/06/08	R53648	002	R	325.55			325.55
28.	9/09/08	R53676	002	R	218.00			218.00
29.	9/16/08	R53974	002	R	2,821.44	741.10-	2,821.44-	741.10-
30.	9/17/08	T66255	002	C	2,037.82			2,037.82
31.	9/23/08	R54126	002	R	7,433.41			7,433.41
32.	9/30/08	R54430	002	R	3,776.87			3,776.87
33.	9/30/08	SC034575	001		12,568.52			12,568.52
34.	10/04/08	R54621	002	R	3,808.95	3,808.95-	3,808.95	3,808.95
35.	10/07/08	R45174	002	R			4,883.27-	4,883.27-
36.	10/17/08	R55039	002	R	4,340.68	340.68-	4,340.68-	340.68-
37.	10/21/08	R55118	004	R	4,167.45	1,147.45-		3,020.00
38.	10/21/08	R55122	002	R	4,736.77			4,736.77
39.	10/24/08	R55346	002	R	5,635.50			5,635.50
40.	10/31/08	SC034824	001		4,930.54			4,930.54
41.	11/05/08	R55665	002	R	5,263.07		10,526.14-	5,263.07-
42.	11/14/08	R56082	002	R	4,340.68	340.68-	4,340.68-	340.68-
43.	11/18/08	R56161	002	R	7,433.41			7,433.41
44.	11/18/08	R56164	002	R	4,736.77			4,736.77
45.	11/19/08	R56242	002	R	6,348.24			6,348.24
46.	11/20/08	R56283	002	R	4,736.77			4,736.77
47.	11/21/08	R56353	002	R	5,635.50	1,874.89-	1,874.89	5,635.50

Remit to:

KSM Exchange, LLC
P.O. Box 270360
Oklahoma City, OK 73127

TEL (405) 495-7820

FAX (405) 446-4444

EXHIBIT

B



KIRBY-SMITH

MACHINERY, INC.



	Date	Invoice	Br	SD	Charges	Adjustments	Payments	Total
48.	11/22/08	R56368	004	R	4,812.42			4,812.42
49.	11/25/08	R56394	002	R	3,650.07			3,650.07
50.	11/25/08	R56395	002	R	4,883.27			4,883.27
51.	11/25/08	R56396	002	R	6,348.24	2,116.08-	2,116.08	6,348.24
52.	11/25/08	R56397	002	R	3,776.87			3,776.87
53.	11/25/08	R56400	002	R	5,371.59			5,371.59
54.	11/25/08	R56403	002	R	217.03			217.03
55.	11/25/08	R56476	002	R	3,808.95	3,808.95-	1,798.84	1,798.84
56.	11/25/08	R56477	002	R	325.55			325.55
57.	11/25/08	R56478	002	R	3,906.61			3,906.61
58.	11/25/08	R56479	002	R	4,730.57			4,730.57
59.	11/25/08	R56480	002	R	162.78			162.78
60.	11/25/08	R56481	002	R	217.50			217.50
61.	11/25/08	R56483	002	R	4,730.57	1,414.30-	1,414.30	4,730.57
62.	11/25/08	R56484	002	R	2,674.95			2,674.95
63.	11/25/08	R56485	002	R	1,551.79			1,551.79
64.	11/25/08	R56486	002	R	4,796.00	3,188.25-	3,188.25	4,796.00
65.	11/25/08	R56487	002	R	5,668.00			5,668.00
66.	11/26/08	R56504	004	R	4,851.00			4,851.00
67.	11/29/08	R56604	004	R	4,851.00			4,851.00
68.	11/30/08	SC035050	001		4,954.18			4,954.18
69.	12/04/08	R56640	002	R	4,883.27			4,883.27
70.	12/04/08	R56647	002	R	4,736.77			4,736.77
71.	12/04/08	R56651	002	R	8,534.54	5,689.69-		2,844.85
72.	12/04/08	R56663	002	R	4,796.00			4,796.00
73.	12/05/08	R53428	002				3,776.87-	3,776.87-
74.	12/05/08	R56785	002	R	5,642.88			5,642.88
75.	12/06/08	R56808	002	R	6,369.95			6,369.95
76.	12/06/08	T67308	002	C	2,998.51			2,998.51
77.	12/09/08	R56826	002	R	4,736.77			4,736.77
78.	12/09/08	R56828	002	R	4,883.27			4,883.27
79.	12/10/08	L15991	004	C	71.34			71.34
80.	12/10/08	R56890	002	R	6,348.24			6,348.24
81.	12/10/08	R56892	002	R	4,730.57			4,730.57
82.	12/10/08	R56894	002	R	8,138.78			8,138.78
83.	12/10/08	R56897	002	R	4,768.50			4,768.50
84.	12/11/08	R56927	002	R	6,348.24			6,348.24
85.	12/11/08	R56928	002	R	8,301.55			8,301.55
86.	12/12/08	R56984	002	R	4,000.00			4,000.00
87.	12/16/08	R57072	002	R	2,194.60			2,194.60
88.	12/16/08	R57075	002	R	4,736.77			4,736.77
89.	12/17/08	R57183	002	R	6,348.24	1,410.72-		4,937.52
90.	12/17/08	U53830	002	W	228.90			228.90
91.	12/18/08	R57228	002	R	4,736.77	4,274.77-	4,274.77	4,736.77
92.	12/19/08	R57283	002	R	2,682.29			2,682.29
93.	12/23/08	R57336	002	R	3,650.07			3,650.07
94.	12/23/08	R57337	002	R	4,883.27			4,883.27
95.	12/23/08	R57339	004	R	4,812.42			4,812.42
96.	12/23/08	R57340	002	R	3,776.87			3,776.87
97.	12/23/08	R57344	002	R	5,371.59			5,371.59
98.	12/23/08	R57345	002	R	217.03			217.03

Remit to:

KSM Exchange, LLC

P.O. Box 270360

Oklahoma City, OK 73127

TEL (405) 495-7820

FAX (405) 440-0112



KIRBY-SMITH MACHINERY, INC.



	Date	Invoice	Br	SD	Charges	Adjustments	Payments	Total
99.	12/23/08	T69495	002	C	1,699.61			1,699.61
100.	12/23/08	U54193	002	W	349.61			349.61
101.	12/24/08	R57413	002	R	2,674.95			2,674.95
102.	12/24/08	R57434	002	R	1,551.79			1,551.79
103.	12/24/08	R57435	002	R	4,796.00	4,796.00-	2,239.96	2,239.96
104.	12/24/08	R57441	002	R	5,668.00			5,668.00
105.	12/24/08	R57444	002	R	325.55			325.55
106.	12/24/08	R57445	002	R	4,883.27			4,883.27
107.	12/24/08	R57446	002	R	3,906.61			3,906.61
108.	12/24/08	R57448	002	R	4,730.57			4,730.57
109.	12/24/08	R57449	002	R	162.78			162.78
110.	12/24/08	R57450	002	R	4,736.77	2,336.88-		2,399.89
111.	12/24/08	T69517	002	C	88.57			88.57
112.	12/24/08	T69519	002	C	602.07			602.07
113.	12/26/08	R57479	004	R	4,851.00			4,851.00
114.	12/30/08	R57500	002	R	217.50			217.50
115.	12/30/08	R57511	004	R	4,851.00	1,639.78-		3,211.22
116.	12/31/08	SC035295	001		6,673.94			6,673.94
117.	12/31/08	U53593	002	W	9,544.61			9,544.61
118.	1/06/09	R57699	002	R	6,369.95			6,369.95
119.	1/06/09	R57702	002	R	4,736.77			4,736.77
120.	1/06/09	R57707	002	R	4,883.27			4,883.27
121.	1/06/09	R57727	002	R	5,642.88			5,642.88
122.	1/07/09	R57804	002	R	6,348.24			6,348.24
123.	1/07/09	R57807	002	R	4,730.57			4,730.57
124.	1/07/09	R57812	002	R	4,768.50			4,768.50
125.	1/07/09	U53910	002	W	2,193.20			2,193.20
126.	1/08/09	R57851	002	R	6,348.24			6,348.24
127.	1/08/09	R57852	002	R	8,301.55			8,301.55
128.	1/09/09	R57889	002	R	4,000.00			4,000.00
129.	1/10/09	T69902	002	C	108.95			108.95
130.	1/13/09	R57959	002	R	2,194.60			2,194.60
131.	1/13/09	R57961	002	R	4,736.77			4,736.77
132.	1/16/09	R58117	002	R	2,682.29			2,682.29
133.	1/17/09	R58149	002	R	266.00			266.00
134.	1/20/09	R58172	002	R	3,650.07			3,650.07
135.	1/20/09	R58173	002	R	4,883.27			4,883.27
136.	1/20/09	R58175	002	R	3,776.87			3,776.87
137.	1/20/09	R58181	002	R	217.03			217.03
138.	1/21/09	R58232	002	R	2,674.95	1,182.84-		1,492.11
139.	1/21/09	R58234	004	R	126.00			126.00
140.	1/21/09	T70193	002	C	4,939.13			4,939.13
141.	1/22/09	R58252	002	R	3,906.61			3,906.61
142.	1/22/09	R58253	002	R	4,730.57			4,730.57
143.	1/22/09	R58255	004	R	4,812.42	2,408.57-		2,403.85
144.	1/23/09	R58278	002	R	162.78			162.78
145.	1/23/09	R58287	002	R	5,668.00			5,668.00
146.	1/23/09	U54329	002	W	3,444.17			3,444.17
147.	1/24/09	R58319	002	R	325.55			325.55
148.	1/24/09	R58320	002	R	574.00			574.00
149.	1/27/09	R58354	002	R	218.00			218.00

Remit to:

KSM Exchange, LLC

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KIRBY-SMITH

MACHINERY, INC.



150.	1/27/09	R58357	002 R	1,551.79	1,036.34-	515.45
151.	1/27/09	T70365	002 C	618.66		618.66
152.	1/29/09	R58423	002 R	4,883.27		4,883.27
153.	1/30/09	R58459	002 R	5,642.88		5,642.88
154.	1/31/09	K80480	001 W	1,292.22		1,292.22
155.	1/31/09	SC035530	001	6,090.08		6,090.08
156.	1/31/09	T70158	002 C	495.28		495.28
157.	1/31/09	U54442	002 W	4,434.91		4,434.91
158.	1/31/09	U54476	002 W	1,313.85		1,313.85
159.	2/05/09	R58530	002 R	6,348.24	5,237.88-	1,110.36
160.	2/05/09	R58531	002 R	337.50		337.50
161.	2/05/09	R58534	002 R	4,730.57	4,388.57-	342.00
162.	2/05/09	R58538	002 R	4,883.27		4,883.27
163.	2/05/09	R58550	002 R	4,768.50	1,238.44-	3,530.06
164.	2/05/09	U54201	002 W	7,694.46		7,694.46
165.	2/05/09	U54444	002 W	11,731.53		11,731.53
166.	2/05/09	U54592	002 W	1,060.89		1,060.89
167.	2/10/09	R58695	002 R	2,194.60	1,920.17-	274.43
168.	2/10/09	R58696	002 R	4,736.77	243.93-	4,492.84
169.	2/10/09	R58697	002 R	112.50		112.50
170.	2/13/09	R54068	002 R		340.68-	340.68-
171.	2/13/09	R58842	002 R	1,804.45	1,727.95-	76.50
172.	2/13/09	R58644	002 R	2,682.29	2,596.79-	85.50
173.	2/14/09	U54730	002 W	2,864.27		2,864.27
174.	2/17/09	R58896	002 R	3,650.07	2,027.82-	1,622.25
175.	2/17/09	R58897	002 R	4,883.27	3,044.01-	1,839.26
176.	2/17/09	R58902	002 R	217.03		217.03
177.	2/18/09	U54344	002 W	6,019.56		6,019.56
178.	2/19/09	R58976	002 R	3,906.61	2,939.48-	967.13
179.	2/19/09	R58977	002 R	216.75		216.75
180.	2/19/09	U54439	002 W	1,507.19		1,507.19
181.	2/20/09	R59012	002 R	162.78		162.78
182.	2/20/09	R59018	002 R	5,668.00	5,533.00-	135.00
183.	2/21/09	R59038	002 R	325.55	108.52-	217.03
184.	2/26/09	R59161	002 R	67.50		67.50
185.	2/27/09	R59203	002 R	5,642.88	3,472.12-	2,170.76
186.	2/28/09	D08098	004 W	2,894.66		2,894.66
187.	2/28/09	SC035745	001	7,562.08		7,562.08
188.	2/28/09	U54841	002 W	3,020.23		3,020.23
189.	3/04/09	R59270	002 R	171.00		171.00
190.	3/04/09	U54543	002 W	6,412.74		6,412.74
191.	3/04/09	U54842	002 W	1,856.82		1,856.82
192.	3/06/09	U54196	002 W	2,836.63		2,836.63
193.	3/11/09	U54873	002 W	2,693.69		2,693.69
194.	3/13/09	U54886	002 W	6,205.09		6,205.09
195.	3/13/09	U54952	002 W	3,970.78		3,970.78
196.	3/14/09	U54665	002 W	7,927.91		7,927.91
197.	3/17/09	R59633	002 R	217.03		217.03
198.	3/19/09	R59703	002 R	216.75		216.75
199.	3/19/09	U54946	002 W	2,444.30		2,444.30
200.	3/24/09	U55037	002 W	3,255.51		3,255.51
201.	3/31/09	SC035955	001	7,383.77		7,383.77

Remit to:

KSM Exchange, LLC

P.O. Box 270360

Oklahoma City, OK 73127

TEL (405) 495-7820

FAX (405) 440-0112



FILED IN THE DISTRICT COURT
OKLAHOMA COUNTY, OKLA.

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

APR 14 2009

PATRICIA PRESLEY, COURT CLERK
by [Signature]
DEPUTY

Kirby-Smith Machinery, Inc.,

Plaintiff,

v.

AOK Construction, LLC, and
Continental Energy Services, LLC,

Defendants.

Case No. CJ-2009-3493

FIRST AMENDED PETITION

FIRST CAUSE OF ACTION

Plaintiff, Kirby-Smith Machinery, Inc., an Oklahoma corporation ("Plaintiff" or "Kirby-Smith"), for its First Cause of Action against Defendant, AOK Construction, LLC, a Oklahoma limited liability company ("AOK Construction"), states:

1. On or about September 30, 2008, a certain credit application, which is attached hereto as Exhibit "A," was signed and delivered to Kirby-Smith pursuant to which Kirby-Smith opened a commercial credit account in the name of AOK Construction for the purpose of charging the rental of cranes, heavy equipment, and industrial equipment from Kirby-Smith and charging parts, goods, labor, and services from Kirby-Smith.

2. Based on said commercial credit account and as set forth on Kirby-Smith's statement of account, which is attached hereto as Exhibit "B," Kirby-Smith rented a certain heavy equipment and accessories therefor; provided certain parts and goods; and provided repair services, including related parts, goods and labor.

3. AOK Construction is indebted to Kirby-Smith as set forth on Kirby-Smith's statement of account, Exhibit "B," for equipment rental charges and other charges related thereto,

including accessories, taxes, delivery fees, parts, goods, and services; for parts and goods; and for repair services, including related parts, goods and labor, in the sum of \$730,683.24, with prejudgment and postjudgment interest on said sum at the contract rate of 18.00% per annum from and including April 1, 2009, until paid, and for all costs, accrued and accruing, including a reasonable attorneys' fee for Kirby-Smith's attorneys, which account, Exhibit "B," is correct and which amounts are just, due, and owing by AOK Construction to Kirby-Smith.

WHEREFORE, Plaintiff, Kirby-Smith Machinery, Inc., an Oklahoma corporation, prays judgment against Defendant, AOK Construction, LLC, an Oklahoma limited liability company, on its First Cause of Action in the sum of \$730,683.24, with prejudgment and postjudgment interest on said sum at the contract rate of 18.00% per annum from and including April 1, 2009, until paid; for all costs, accrued and accruing, including a reasonable attorneys' fee for the plaintiff's attorneys; and for such other and further relief as this Court deems just and equitable.

SECOND CAUSE OF ACTION

Kirby-Smith, for its Second Cause of Action against Defendant, Continental Energy Services, LLC, a Delaware limited liability company ("Continental"), states:

4. Kirby-Smith adopts, realleges, restates and incorporates herein by reference all statements and allegations of Kirby-Smith's First Cause of Action as if fully set forth herein.

5. Continental took the place of, and the assets of, AOK Construction. That there was a consolidation or merger of AOK Construction and Continental.

6. Continental expressly or implicitly agreed to assume or pay the indebtedness referred to above to Kirby-Smith.

7. Continental was, and is, a continuation of AOK Construction.

8. AOK Construction's transfer of all or substantially all its property to Continental was fraudulent in fact.

9. AOK Construction's transfer of all or substantially all its property to Continental was fraudulent within the meaning of the Oklahoma Fraudulent Transfer Act, 24 O.S. §§ 112 to 123.

10. Continental is the alter ego of AOK Construction.

WHEREFORE, Plaintiff, Kirby-Smith Machinery, Inc., prays judgment against Defendants, Continental Energy Services, LLC, a Delaware limited liability company, on its Second Cause of Action in the sum of \$730,683.24, with prejudgment and postjudgment interest on said sum at the contract rate of 18.00% per annum from and including April 1, 2009, until paid; for all costs, accrued and accruing, including a reasonable attorneys' fee for the plaintiff's attorneys; and for such other and further relief as this Court deems just and equitable.

THIRD CAUSE OF ACTION

Kirby-Smith, for its Second Cause of Action against AOK Construction and Continental, states:

11. Kirby-Smith furnished valuable parts, goods, labor, and services to AOK Construction and Continental with a reasonable expectation of being compensated.

12. AOK Construction and Continental knowingly accepted the benefit of Kirby-Smith's parts, goods, labor, and services.

13. AOK Construction and Continental would be unfairly benefitted by receiving Kirby-Smith's parts, goods, labor, and services if no compensation were paid to Kirby-Smith.

14. The fair value of the parts, goods, labor, and services that Kirby-Smith furnished to AOK Construction and Continental is the sum of \$730,683.24, with prejudgment and postjudgment interest on said sum at the rate of 18.00% per annum from and including April 1, 2009, until paid,

and for all costs, accrued and accruing, including a reasonable attorneys' fee for Plaintiff's attorneys, which amounts are just, due, and owing by AOK Construction and Continental to Kirby-Smith.

WHEREFORE, Plaintiff, Kirby-Smith Machinery, Inc., an Oklahoma corporation, prays judgment against Defendants, AOK Construction, LLC, an Oklahoma limited liability company, and Continental Energy Services, LLC, a Delaware limited liability company, on its Third Cause of Action in the sum of \$730,683.24, with prejudgment and postjudgment interest on said sum at the rate of 18.00% per annum from and including April 1, 2009, until paid; for all costs, accrued and accruing, including a reasonable attorneys' fee for the plaintiff's attorneys; and for such other and further relief as this Court deems just and equitable.

FOURTH CAUSE OF ACTION

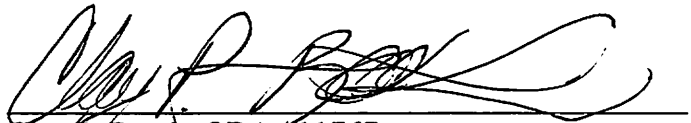
Kirby-Smith, for its Fourth Cause of Action against AOK Construction and Continental, states:

15. AOK Construction and Continental voluntarily accepted the benefits of Kirby-Smith's offer to obtain parts, goods, and services from Kirby-Smith when AOK Construction and Continental knew or should have known that Kirby-Smith made the offer intending to receive payment therefor.

16. As AOK Construction and Continental knew or should have known, and as shown by the statement of account, Exhibit "B," the specific benefit that Kirby-Smith intended to receive from AOK Construction and Continental is the sum of \$730,683.24, with prejudgment and postjudgment interest on said sum at the rate of 18.00% per annum from and including April 1, 2009, until paid, and for all costs, accrued and accruing, including a reasonable attorneys' fee for Plaintiff's attorneys, which amounts are just, due, and owing by AOK Construction and Continental to Kirby-Smith.

WHEREFORE, Plaintiff, Kirby-Smith Machinery, Inc., an Oklahoma corporation, prays judgment against Defendants, AOK Construction, LLC, an Oklahoma limited liability company, and Continental Energy Services, LLC, a Delaware limited liability company, on its Fourth Cause of Action in the sum of \$730,683.24, with prejudgment and postjudgment interest on said sum at the rate of 18.00% per annum from and including April 1, 2009, until paid; for all costs, accrued and accruing, including a reasonable attorneys' fee for the plaintiff's attorneys; and for such other and further relief as this Court deems just and equitable.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Clay P. Booth', is written over a horizontal line.

Clay P. Booth, OBA #11767

- for the firm -

ATTORNEYS' LIEN CLAIMED

KLINE, KLINE, ELLIOTT & BRYANT, P.C.

720 NE 63rd Street

Oklahoma City, OK 73105-6405

Telephone: (405) 848-4448

Facsimile: (405) 842-4539

Attorneys for Plaintiff, Kirby-Smith Machinery, Inc.

Kirby-Smith Machinery, Inc. v. AOK Construction, LLC, et al.
Oklahoma County District Court, Case No. CJ-2009-3493
First Amended Petition

3890-088

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RAZORBACK CONCRETE

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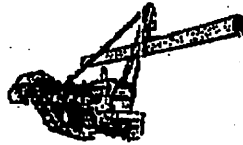
PAGE 03/03

002/002

09/30/2008 TUE 13:59 FAX 918 429 1342 AOK Construction

918429
Credit Ap Update

AOK CONSTRUCTION, LLC



COMPANY NAME: AOK CONSTRUCTION, LLC
 MAILING ADDRESS: P.O. BOX 308 MCALESTER, OK 74502
 SHIPPING ADDRESS: 9055 E. HWY 270, MCALESTER, OK 74502
 OWNER'S NAME: CONTINENTAL ENERGY SERVICES
 TYPE OF BUSINESS: UNDERGROUND PIPELINE
 TAX ID#: 73-1597802 PO REQUIRED: YES
 BANK NAME: LASALLE BANK N.A.
 ADDRESS: 135 S LASALLE CHICAGO, IL 60603
 TELEPHONE #: 312-904-9028 CONTACT: SEAN SILVER

CREDIT REFERENCES:
KIRBY SMITH MACHINERY
PO BOX 270380
OKC, OK 73137
TELEPHONE: 405-495-7820
FAX: 405-757-5973

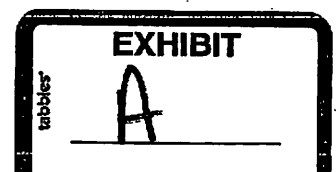
NAPA AUTO
PO BOX 67
MCALESTER, OK 74501
TELEPHONE #: 918-423-4026
FAX #: 918-423-4763

WESTERN SUPPLIES
BOX 561
WICHITA FALLS, TX 76307
TELEPHONE #: 840-855-3401
FAX #: 840-855-7592

WARREN CAT
DEPT 1944
TULSA, OK 74182
TELEPHONE #: 918-627-4500
FAX #: 918-600-2392

PO Box 308 • 9055 E. Highway 270 • McAlester, OK 74502 • 918 429-1341 • Fax 918-429-1342
aokconstructionlll@earthlink.net

Dreg D. Karpinsky - Pres.





KIRBY-SMITH

MACHINERY, INC.



Customer 918429
AOK CONSTRUCTION, L.L.C.
April 10, 2009
Balance \$730,683.24

	Date	Invoice	Br	SD	Charges	Adjustments	Payments	Total
1.	11/30/07	SC032120	001		58.86			58.86
2.	12/06/07	R43642	002	R	8,534.54			8,534.54
3.	12/12/07	R43810	002	R	8,138.78			8,138.78
4.	12/25/07	R44185	002	R	4,883.27			4,883.27
5.	12/25/07	R44210	002	R	5,371.59			5,371.59
6.	12/31/07	SC032397	001		741.06			741.06
7.	1/22/08	R45179	004	R	4,812.42			4,812.42
8.	1/22/08	R45180	002	R	4,730.57			4,730.57
9.	1/22/08	R45181	002	R	6,348.24			6,348.24
10.	1/31/08	SC032651	001		1,653.81			1,653.81
11.	2/05/08	R45641	002	R	6,369.95			6,369.95
12.	2/29/08	SC032900	001		1,803.62			1,803.62
13.	3/31/08	SC033140	001		2,213.92			2,213.92
14.	4/30/08	SC033373	001		12,883.42			12,883.42
15.	5/17/08	T62111	002	C	4,216.43			4,216.43
16.	5/29/08	R49939	002	R	8,301.55			8,301.55
17.	5/29/08	R49957	004	R	4,851.00			4,851.00
18.	5/31/08	SC033621	001		14,999.29			14,999.29
19.	6/30/08	SC033859	001		4,488.03			4,488.03
20.	7/31/08	R52206	002	R	17,459.21	11,639.48-		5,819.73
21.	7/31/08	SC034081	001		5,732.59			5,732.59
22.	7/31/08	U52529	002	W	2,344.79			2,344.79
23.	8/05/08	R52316	002	R	4,883.27			4,883.27
24.	8/26/08	R53060	002	R	2,194.60			2,194.60
25.	8/31/08	SC034320	001		10,666.69			10,666.69
26.	9/05/08	R53603	002	R	162.78			162.78
27.	9/06/08	R53648	002	R	325.55			325.55
28.	9/09/08	R53676	002	R	218.00			218.00
29.	9/16/08	R53974	002	R	2,821.44	741.10-	2,821.44-	741.10-
30.	9/17/08	T66255	002	C	2,037.82			2,037.82
31.	9/23/08	R54126	002	R	7,433.41			7,433.41
32.	9/30/08	R54430	002	R	3,776.87			3,776.87
33.	9/30/08	SC034575	001		12,568.52			12,568.52
34.	10/04/08	R54621	002	R	3,808.95	3,808.95-	3,808.95	3,808.95
35.	10/07/08	R45174	002	R			4,883.27-	4,883.27-
36.	10/17/08	R55039	002	R	4,340.68	340.68-	4,340.68-	340.68-
37.	10/21/08	R55118	004	R	4,167.45	1,147.45-		3,020.00
38.	10/21/08	R55122	002	R	4,736.77			4,736.77
39.	10/24/08	R55346	002	R	5,635.50			5,635.50
40.	10/31/08	SC034824	001		4,930.54			4,930.54
41.	11/05/08	R55665	002	R	5,263.07		10,526.14-	5,263.07-
42.	11/14/08	R56082	002	R	4,340.68	340.68-	4,340.68-	340.68-
43.	11/18/08	R56161	002	R	7,433.41			7,433.41
44.	11/18/08	R56164	002	R	4,736.77			4,736.77
45.	11/19/08	R56242	002	R	6,348.24			6,348.24
46.	11/20/08	R56283	002	R	4,736.77			4,736.77
47.	11/21/08	R56353	002	R	5,635.50	1,874.89-	1,874.89	5,635.50

Remit to:

KSM Exchange, LLC

P.O. Box 270360

Oklahoma City, OK 73127

TEL (405) 495-7820

FAX (405) 444-4444

EXHIBIT

B



KIRBY-SMITH MACHINERY, INC.



	Date	Invoice	Br	SD	Charges	Adjustments	Payments	Total
48.	11/22/08	R56368	004	R	4,812.42			4,812.42
49.	11/25/08	R56394	002	R	3,650.07			3,650.07
50.	11/25/08	R56395	002	R	4,883.27			4,883.27
51.	11/25/08	R56396	002	R	6,348.24	2,116.08-	2,116.08	6,348.24
52.	11/25/08	R56397	002	R	3,776.87			3,776.87
53.	11/25/08	R56400	002	R	5,371.59			5,371.59
54.	11/25/08	R56403	002	R	217.03			217.03
55.	11/25/08	R56476	002	R	3,808.95	3,808.95-	1,798.84	1,798.84
56.	11/25/08	R56477	002	R	325.55			325.55
57.	11/25/08	R56478	002	R	3,906.61			3,906.61
58.	11/25/08	R56479	002	R	4,730.57			4,730.57
59.	11/25/08	R56480	002	R	162.78			162.78
60.	11/25/08	R56481	002	R	217.50			217.50
61.	11/25/08	R56483	002	R	4,730.57	1,414.30-	1,414.30	4,730.57
62.	11/25/08	R56484	002	R	2,674.95			2,674.95
63.	11/25/08	R56485	002	R	1,551.79			1,551.79
64.	11/25/08	R56486	002	R	4,796.00	3,188.25-	3,188.25	4,796.00
65.	11/25/08	R56487	002	R	5,668.00			5,668.00
66.	11/26/08	R56504	004	R	4,851.00			4,851.00
67.	11/29/08	R56604	004	R	4,851.00			4,851.00
68.	11/30/08	SC035050	001		4,954.18			4,954.18
69.	12/04/08	R56640	002	R	4,883.27			4,883.27
70.	12/04/08	R56647	002	R	4,736.77			4,736.77
71.	12/04/08	R56651	002	R	8,534.54	5,689.69-		2,844.85
72.	12/04/08	R56663	002	R	4,796.00			4,796.00
73.	12/05/08	R53428	002				3,776.87-	3,776.87-
74.	12/05/08	R56785	002	R	5,642.88			5,642.88
75.	12/06/08	R56808	002	R	6,369.95			6,369.95
76.	12/06/08	T67308	002	C	2,998.51			2,998.51
77.	12/09/08	R56826	002	R	4,736.77			4,736.77
78.	12/09/08	R56828	002	R	4,883.27			4,883.27
79.	12/10/08	L15991	004	C	71.34			71.34
80.	12/10/08	R56890	002	R	6,348.24			6,348.24
81.	12/10/08	R56892	002	R	4,730.57			4,730.57
82.	12/10/08	R56894	002	R	8,138.78			8,138.78
83.	12/10/08	R56897	002	R	4,768.50			4,768.50
84.	12/11/08	R56927	002	R	6,348.24			6,348.24
85.	12/11/08	R56928	002	R	8,301.55			8,301.55
86.	12/12/08	R56984	002	R	4,000.00			4,000.00
87.	12/16/08	R57072	002	R	2,194.60			2,194.60
88.	12/16/08	R57075	002	R	4,736.77			4,736.77
89.	12/17/08	R57183	002	R	6,348.24	1,410.72-		4,937.52
90.	12/17/08	U53830	002	W	228.90			228.90
91.	12/18/08	R57228	002	R	4,736.77	4,274.77-	4,274.77	4,736.77
92.	12/19/08	R57283	002	R	2,682.29			2,682.29
93.	12/23/08	R57336	002	R	3,650.07			3,650.07
94.	12/23/08	R57337	002	R	4,883.27			4,883.27
95.	12/23/08	R57339	004	R	4,812.42			4,812.42
96.	12/23/08	R57340	002	R	3,776.87			3,776.87
97.	12/23/08	R57344	002	R	5,371.59			5,371.59
98.	12/23/08	R57345	002	R	217.03			217.03

Remit to:

KSM Exchange, LLC

P.O. Box 270360

Oklahoma City, OK 73127

FAX (405) 440-0112



KIRBY-SMITH

MACHINERY, INC.



	Date	Invoice	Br	SD	Charges	Adjustments	Payments	Total
99.	12/23/08	T69495	002	C	1,699.61			1,699.61
100.	12/23/08	U54193	002	W	349.61			349.61
101.	12/24/08	R57413	002	R	2,674.95			2,674.95
102.	12/24/08	R57434	002	R	1,551.79			1,551.79
103.	12/24/08	R57435	002	R	4,796.00	4,796.00-	2,239.96	2,239.96
104.	12/24/08	R57441	002	R	5,668.00			5,668.00
105.	12/24/08	R57444	002	R	325.55			325.55
106.	12/24/08	R57445	002	R	4,883.27			4,883.27
107.	12/24/08	R57446	002	R	3,906.61			3,906.61
108.	12/24/08	R57448	002	R	4,730.57			4,730.57
109.	12/24/08	R57449	002	R	162.78			162.78
110.	12/24/08	R57450	002	R	4,736.77	2,336.88-		2,399.89
111.	12/24/08	T69517	002	C	88.57			88.57
112.	12/24/08	T69519	002	C	602.07			602.07
113.	12/26/08	R57479	004	R	4,851.00			4,851.00
114.	12/30/08	R57500	002	R	217.50			217.50
115.	12/30/08	R57511	004	R	4,851.00	1,639.78-		3,211.22
116.	12/31/08	SC035295	001		6,673.94			6,673.94
117.	12/31/08	U53593	002	W	9,544.61			9,544.61
118.	1/06/09	R57699	002	R	6,369.95			6,369.95
119.	1/06/09	R57702	002	R	4,736.77			4,736.77
120.	1/06/09	R57707	002	R	4,883.27			4,883.27
121.	1/06/09	R57727	002	R	5,642.88			5,642.88
122.	1/07/09	R57804	002	R	6,348.24			6,348.24
123.	1/07/09	R57807	002	R	4,730.57			4,730.57
124.	1/07/09	R57812	002	R	4,768.50			4,768.50
125.	1/07/09	U53910	002	W	2,193.20			2,193.20
126.	1/08/09	R57851	002	R	6,348.24			6,348.24
127.	1/08/09	R57852	002	R	8,301.55			8,301.55
128.	1/09/09	R57889	002	R	4,000.00			4,000.00
129.	1/10/09	T69902	002	C	108.95			108.95
130.	1/13/09	R57959	002	R	2,194.60			2,194.60
131.	1/13/09	R57961	002	R	4,736.77			4,736.77
132.	1/16/09	R58117	002	R	2,682.29			2,682.29
133.	1/17/09	R58149	002	R	266.00			266.00
134.	1/20/09	R58172	002	R	3,650.07			3,650.07
135.	1/20/09	R58173	002	R	4,883.27			4,883.27
136.	1/20/09	R58175	002	R	3,776.87			3,776.87
137.	1/20/09	R58181	002	R	217.03			217.03
138.	1/21/09	R58232	002	R	2,674.95	1,182.84-		1,492.11
139.	1/21/09	R58234	004	R	126.00			126.00
140.	1/21/09	T70193	002	C	4,939.13			4,939.13
141.	1/22/09	R58252	002	R	3,906.61			3,906.61
142.	1/22/09	R58253	002	R	4,730.57			4,730.57
143.	1/22/09	R58255	004	R	4,812.42	2,408.57-		2,403.85
144.	1/23/09	R58278	002	R	162.78			162.78
145.	1/23/09	R58287	002	R	5,668.00			5,668.00
146.	1/23/09	U54329	002	W	3,444.17			3,444.17
147.	1/24/09	R58319	002	R	325.55			325.55
148.	1/24/09	R58320	002	R	574.00			574.00
149.	1/27/09	R58354	002	R	218.00			218.00

Remit to:

KSM Exchange, LLC

P.O. Box 270360

Oklahoma City, OK 73127

TEL (405) 495-7820

FAX (405) 440-0112



KIRBY-SMITH

MACHINERY, INC.



150.	1/27/09	R58357	002 R	1,551.79	1,036.34-	515.45
151.	1/27/09	T70365	002 C	618.66		618.66
152.	1/29/09	R58423	002 R	4,883.27		4,883.27
153.	1/30/09	R58459	002 R	5,642.88		5,642.88
154.	1/31/09	K80480	001 W	1,292.22		1,292.22
155.	1/31/09	SC035530	001	6,090.08		6,090.08
156.	1/31/09	T70158	002 C	495.28		495.28
157.	1/31/09	U54442	002 W	4,434.91		4,434.91
158.	1/31/09	U54476	002 W	1,313.85		1,313.85
159.	2/05/09	R58530	002 R	6,348.24	5,237.88-	1,110.36
160.	2/05/09	R58531	002 R	337.50		337.50
161.	2/05/09	R58534	002 R	4,730.57	4,388.57-	342.00
162.	2/05/09	R58538	002 R	4,883.27		4,883.27
163.	2/05/09	R58550	002 R	4,768.50	1,238.44-	3,530.06
164.	2/05/09	U54201	002 W	7,694.46		7,694.46
165.	2/05/09	U54444	002 W	11,731.53		11,731.53
166.	2/05/09	U54592	002 W	1,060.89		1,060.89
167.	2/10/09	R58695	002 R	2,194.60	1,920.17-	274.43
168.	2/10/09	R58696	002 R	4,736.77	243.93-	4,492.84
169.	2/10/09	R58697	002 R	112.50		112.50
170.	2/13/09	R54068	002 R		340.68-	340.68-
171.	2/13/09	R58842	002 R	1,804.45	1,727.95-	76.50
172.	2/13/09	R58844	002 R	2,682.29	2,596.79-	85.50
173.	2/14/09	U54730	002 W	2,864.27		2,864.27
174.	2/17/09	R58896	002 R	3,650.07	2,027.82-	1,622.25
175.	2/17/09	R58897	002 R	4,883.27	3,044.01-	1,839.26
176.	2/17/09	R58902	002 R	217.03		217.03
177.	2/18/09	U54344	002 W	6,019.56		6,019.56
178.	2/19/09	R58976	002 R	3,906.61	2,939.48-	967.13
179.	2/19/09	R58977	002 R	216.75		216.75
180.	2/19/09	U54439	002 W	1,507.19		1,507.19
181.	2/20/09	R59012	002 R	162.78		162.78
182.	2/20/09	R59018	002 R	5,668.00	5,533.00-	135.00
183.	2/21/09	R59038	002 R	325.55	108.52-	217.03
184.	2/26/09	R59161	002 R	67.50		67.50
185.	2/27/09	R59203	002 R	5,642.88	3,472.12-	2,170.76
186.	2/28/09	D08098	004 W	2,894.66		2,894.66
187.	2/28/09	SC035745	001	7,562.08		7,562.08
188.	2/28/09	U54841	002 W	3,020.23		3,020.23
189.	3/04/09	R59270	002 R	171.00		171.00
190.	3/04/09	U54543	002 W	6,412.74		6,412.74
191.	3/04/09	U54842	002 W	1,856.82		1,856.82
192.	3/06/09	U54196	002 W	2,836.63		2,836.63
193.	3/11/09	U54873	002 W	2,693.69		2,693.69
194.	3/13/09	U54886	002 W	6,205.09		6,205.09
195.	3/13/09	U54952	002 W	3,970.78		3,970.78
196.	3/14/09	U54665	002 W	7,927.91		7,927.91
197.	3/17/09	R59633	002 R	217.03		217.03
198.	3/19/09	R59703	002 R	216.75		216.75
199.	3/19/09	U54946	002 W	2,444.30		2,444.30
200.	3/24/09	U55037	002 W	3,255.51		3,255.51
201.	3/31/09	SC035955	001	7,383.77		7,383.77

Remit to:

KSM Exchange, LLC

P.O. Box 270360

Oklahoma City, OK 73127

TEL (405) 495-7820

FAX (405) 440-0112



PROOF OF SERVICE AFFIDAVIT

APR 15 2009

PATRICIA PRESLEY, COURT CLERK
by [Signature]

Kerry-Smith Machinery Inc

Case No. CJ-2009-3973

County Oklahoma

vs. Date Rec. _____

Court Date _____

Client Klim Lan

ADK Construction LLC and
Continental Energy Services

I, being duly sworn, certify that I received on 4-14, 2009 the following documents:

- | | | | |
|--|--|--|--|
| <input checked="" type="checkbox"/> Summons w/Petition | <input type="checkbox"/> Injunction | <input type="checkbox"/> Motion to Modify | <input type="checkbox"/> Interrogations |
| <input type="checkbox"/> Amended Petition/Complaint | <input type="checkbox"/> Garnishment | <input type="checkbox"/> Motion for Leave/Vacate/Enter | <input type="checkbox"/> Brief-Plaintiff's/Defendant's |
| <input type="checkbox"/> Petition/3rd Party Defendant | <input type="checkbox"/> Subpoena Duces Tecum | <input type="checkbox"/> Motion/Summary Judgment | <input type="checkbox"/> Journal Entry |
| <input type="checkbox"/> Small Claims Affidavit | <input type="checkbox"/> Deposition Subpoena | <input type="checkbox"/> Motion/Deficiency Judgment | <input type="checkbox"/> Cross/Counter Claim |
| <input type="checkbox"/> Forcible Entry & Detainer | <input type="checkbox"/> Witness Fees | <input type="checkbox"/> Request for Admissions | <input type="checkbox"/> Lis Pendens |
| <input type="checkbox"/> Hearing on Assets | <input type="checkbox"/> Notice to Take Deposition | <input type="checkbox"/> Request for Production | <input type="checkbox"/> Letter |
| <input type="checkbox"/> Citation for Contempt | <input type="checkbox"/> Notice of Hearing | <input type="checkbox"/> Order/Affidavit | <input type="checkbox"/> Temporary Restraining Order |
| <input type="checkbox"/> Other _____ | | | |

Entry of Appearance

METHOD OF SERVICE: And served the same according to law in the following manner, to wit:

PERSONAL SERVICE

- ☐ by delivering a true copy of said process personally to _____ at _____ Date: _____ Time: _____
- ☐ by delivering a true copy of said process personally to _____ at _____ Date: _____ Time: _____

USUAL PLACE OF RESIDENCE

- ☐ by leaving a true copy of said process for _____ with _____ a resident/family member, fifteen years of age or older, at _____ which is his/her usual place of residence. Date: _____ Time: _____

CORPORATION/PARTNERSHIP, ETC.

- ☒ by delivering a true copy of said process to Barbara McCarroll he/she/it, being the service agent, agent in charge, an officer or partner of said entity, to wit: ADK Construction LLC at 2055 E Hwy 270, McAlester, OK Date: 4-15-09 Time: 1015

POSTED SERVICE

- ☐ by affixing a true copy of said process to the premises located at _____ which is in the possession of the defendant to wit: _____

SERVICE BY MAIL

- ☐ by mailing a true copy of said process to _____ by certified mail, restricted delivery, return receipt requested, at _____ Date: _____

NOT FOUND

- ☐ Said process WAS NOT SERVED on the following named for reasons stated: _____

OTHER INFORMATION

- ☐ _____

Subscribed and sworn to before me this _____ day of _____ 20____.

Undersigned declares under penalty of perjury that the foregoing is true and correct.

Notary Public _____ Commission Exp. _____
(SEAL)

[Signature] 4-15-09
Name of Server _____ (date)

Fee for service \$ 65.00
Mileage \$ 158.40 Total \$ 223.40

License No. PSS-2007-46
PO Box 791
Choctaw, Okla 73021

268260

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

Kirby-Smith Machinery, Inc.,

Plaintiff,

v.

AOK Construction, LLC, and
Continental Energy Services, LLC,

Defendants.

Case No.

CJ - 2009 - 3493

SUMMONS

To the above-named Defendant:

AOK Construction, LLC
Attn: Any agent or officer authorized to receive service of process
9055 E Old 270 HWY
McAlester, OK 74501

You have been sued by the above-named Plaintiff, and you are directed to file a written answer to the attached Petition in the Court at the above address within twenty (20) days after service of this summons upon you, exclusive of the day of service. Within the same time, a copy of your answer must be delivered or mailed to the attorney for the Plaintiff. Unless you answer the Petition within the time stated, judgment will be rendered against you with costs of the action.

WITNESS my hand and seal of this Court, affixed on the 13th day of April, 2009.

PATRICIA PRESLEY, COURT CLERK

BY: 
Deputy Court Clerk

(SEAL)

Attorneys for Plaintiff:

Clay P. Booth, OBA #11767
- for the firm -
KLINE, KLINE, ELLIOTT & BRYANT, P.C.
720 NE 63rd Street
Oklahoma City, OK 73105-6405
Telephone: (405) 848-4448
Facsimile: (405) 842-4539
Lien Claimed

This summons was served on: 4-15-09
(Date of Service)


(Signature of Person Serving Summons)

YOU MAY SEEK THE ADVICE OF AN ATTORNEY ON ANY MATTER CONNECTED WITH THIS SUIT OR YOUR ANSWER. SUCH ATTORNEY SHOULD BE CONSULTED IMMEDIATELY SO THAT AN ANSWER MAY BE FILED WITHIN THE TIME LIMIT STATED IN THE SUMMONS.

FILED IN THE DISTRICT COURT
OKLAHOMA COUNTY, OKLA.

APR 24 2009

PATRICIA PRESLEY, COURT CLERK
DEPUTYIN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMAKirby-Smith Machinery, Inc.,
Plaintiff,

v.

AOK Construction, LLC, and
Continental Energy Services, LLC,
Defendants.

Case No. CJ-2009-3493

**CERTIFICATE OF SERVICE OF SUMMONS,
FIRST AMENDED PETITION AND ENTRY OF APPEARANCE**

I certify that pursuant to 12 O.S. § 2004.3(A), a true and correct copy of the *Summons, First Amended Petition and Entry of Appearance*, filed April 14, 2009, were sent to the above-named Defendant, Continental Energy Services, LLC, at the address shown, by UPS overnight delivery service, on the 16th day of April, 2009, and receipt thereof on the date shown, as evidenced by the attached electronic receipt signed by the addressee.

Defendant:

Continental Energy Service, LLC

Address Where Served:c/o The Corporation Trust Co.
1209 Orange Street
Wilmington, DE 19801Date Received:

April 17, 2009

Clay P. Booth, OBA #11767

- for the firm -

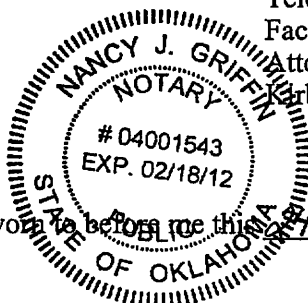
KLINE, KLINE, ELLIOTT & BRYANT, P.C.

720 NE 63rd Street

Oklahoma City, OK 73105-6405

Telephone: (405) 848-4448

Facsimile: (405) 842-4539

Attorney for Judgment Creditor and Plaintiff,
Kirby-Smith Machinery, Inc.Subscribed and sworn to before me this 16 day of April, 2009.

BY:

Nancy J. Griffin
Notary PublicMy Commission Expires: 2/18/2012My Commission Number: 04001543

UPS Next Day AirSM
UPS Worldwide ExpressSM
Shipping Document

See instructions on back. Call 1-800-PICK-UPS (800-742-5877) for additional information.

TRACKING NUMBER **1Z F60 946 22 1000 624 6**

1) SHIPMENT FROM:

SHIPPER'S UPS ACCOUNT NO.

F 60946

REFERENCE NUMBER

3890.88

NAME

Clay Booth

TELEPHONE

405-848-4448

COMPANY

KLINE, KLINE

STREET ADDRESS

720 NE 63RD STREET

CITY AND STATE

OKLAHOMA CITY

ZIP CODE

OK

73105-6410

2) EXTREMELY URGENT DELIVERY TO:

NAME

Continental Energy Services

TELEPHONE

COMPANY

The Corporation Trust Company

STREET ADDRESS

1209 Orange Street

DEPT./FLR.

☐

CITY AND STATE (INCLUDE COUNTRY IF INTERNATIONAL)

Wilmington, DE

ZIP CODE

19801



3) WEIGHT **WEIGHT** **DIMENSIONAL WEIGHT** **SHIPPER'S COPY**
 ENTER "LTR" IF LETTER **LTR** **WEIGHT**

4) TYPE OF SERVICE ☒ **NEXT DAY AIR** ☐ **EXPRESS (INT'L)**
 FOR WORLDWIDE EXPRESS SHIPMENTS Mark on "X" in this box if shipment only contains documents of no commercial value. ☐ **DOCUMENTS ONLY**

5) OPTIONAL SERVICES ☐ **SATURDAY PICKUP** ☐ **SATURDAY DELIVERY**
 See instructions. See instructions. ☐ **INSURED VALUE** ☐ **C.O.D.**
 Contents are automatically protected up to \$100. For insured value over \$100, see instructions. Amount \$ ☐ **An Additional Handling Charge applies for certain items. See instructions.**

6) ADDITIONAL HANDLING CHARGE ☐ **TOTAL CHARGES**

7) METHOD OF PAYMENT ☒ **BILL SHIPPER** ☐ **BILL RECEIVER** ☐ **BILL THIRD PARTY** ☐ **CREDIT CARD** ☐ **CHECK**
 Domestic Only American Express Diner's Club Discover MasterCard Visa
 Record Account No. in Section 8

8) RECEIVER'S / THIRD PARTY'S UPS ACCT. NO. OR MAJOR CREDIT CARD NO. **EXPIRATION DATE**
 THIRD PARTY'S COMPANY NAME
 STREET ADDRESS
 CITY AND STATE ZIP CODE

9) SHIPPER'S SIGNATURE **DATE OF SHIPMENT**
XD Jackson **7/11/09**
 0101911202609 11/00 W

[Close Window](#)

Tracking Summary

Tracking Numbers

Tracking Number: 1Z F60 946 22 1000 624 6
Type: Package
Status: **Delivered**
Delivered On: 04/17/2009
9:37 A.M.
Delivered To: WILMINGTON, DE, US
Signed By: EVENS
Service: NEXT DAY AIR

Tracking results provided by UPS: 04/21/2009 11:01 A.M. ET

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IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

Kirby-Smith Machinery, Inc.,

Plaintiff,

v.

Case No. CJ-2009-3493

AOK Construction, LLC, and
Continental Energy Services, LLC,

Defendants.

and

Ritchie Bros. Auctioneers (America), Inc.,
f/k/a Ritchie Bros. Auctioneers, Inc.,

Garnishee.

FILED IN THE DISTRICT COURT
OKLAHOMA COUNTY, OKLA.

MAY - 1 2009

PATRICIA PRESLEY, COURT CLERK
by LV
DEPUTY

GARNISHMENT AFFIDAVIT
(12 O.S. Supp. 2004 § 1172, as amended)

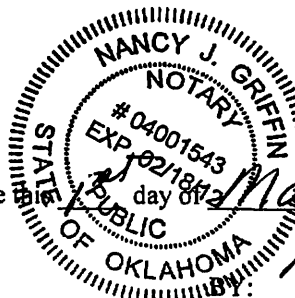
STATE OF OKLAHOMA)
) SS:
COUNTY OF OKLAHOMA)

I, Clay P. Booth, being duly sworn, states as follows:

1. That he is the attorney for the Plaintiff, Kirby-Smith Machinery, Inc., in the above-styled case;
2. **For Prejudgment Garnishment Only:** That AOK Construction, LLC, and Continental Energy Services, LLC, the Defendants in the above-styled cause, is indebted to me in the amount of \$730,683.24, on my original claim, over and above all offsets.
3. **For Postjudgment Garnishment Only:** That _____, the Judgment Debtors and Defendants in the above-styled cause, is indebted to me as follows:
4. That I believe that the above-named Garnishee, Ritchie Bros. Auctioneers (America), Inc., f/k/a Ritchie Bros. Auctioneers, Inc., is indebted to or has property within its possession or under its control, which is not by law exempt from seizure or sale upon execution, belonging to Defendants.
5. That I am *not* seeking a continuing garnishment. That I am seeking a general garnishment.

Clay P. Booth
Clay P. Booth, OBA #11767 (Attorney's Lien Claimed)
- for the firm -
KLINE, KLINE, ELLIOTT & BRYANT, P.C.
720 NE 63rd Street
Oklahoma City, OK 73105-6405
Telephone: (405) 848-4448
Facsimile: (405) 842-4539
Attorney for Plaintiff, Kirby-Smith Machinery, Inc.

Subscribed and sworn to before me this 1 day of May, 2009.



My Commission Expires: 2/18/2012

My Commission Number: 04001543

EXHIBIT 5



IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

FILED IN THE DISTRICT COURT
OKLAHOMA COUNTY, OKLA.

MAY 22 2009

PATRICIA PRESLEY, COURT CLERK
by [Signature] DEPUTY

KIRBY-SMITH MACHINERY, INC.,)

Plaintiff,)

v.)

Case No. CJ-2009-3493

AOK CONSTRUCTION, LLC, and)
CONTINENTAL ENERGY SERVICES, LLC,)

Defendants.)

**ANSWER OF DEFENDANT AOK CONSTRUCTION, LLC
TO PLAINTIFF'S FIRST AMENDED PETITION**

COMES NOW Defendant AOK Construction, LLC ("AOK"), and for its Answer to the First Amended Petition (the "Petition") filed herein by Plaintiff Kirby-Smith Machinery, Inc. ("Kirby-Smith"), denies, generally and specifically, each and every material allegation thereof, and, in addition, alleges and states as follows in response to the numbered paragraphs of the Petition:

1. AOK affirmatively alleges that the language, terms and provisions of Exhibit "A" to the Petition speak for themselves, and denies all contrary or additional allegations in paragraph 1.

2. With respect to paragraph 2 of the Petition, AOK admits that it rented certain heavy equipment and accessories from Kirby-Smith, affirmatively alleges that the language, terms and provisions of Exhibit "B" to the Petition speak for themselves, and denies all contrary or additional allegations.

3. Denied.

4. AOK adopts and incorporates the allegations in paragraphs 1 through 3 above.

5. Although the allegations of the Second Cause of Action are not directed at AOK, AOK denies the allegations of paragraph 5.

6. Although the allegations of the Second Cause of Action are not directed at AOK, AOK denies the allegations of paragraph 6.

7. Although the allegations of the Second Cause of Action are not directed at AOK, AOK denies the allegations of paragraph 7.

8. Although the allegations of the Second Cause of Action are not directed at AOK, AOK denies the allegations of paragraph 8.

9. Although the allegations of the Second Cause of Action are not directed at AOK, AOK denies the allegations of paragraph 9.

10. Although the allegations of the Second Cause of Action are not directed at AOK, AOK denies the allegations of paragraph 10.

11. With respect to paragraph 11 of the Petition, AOK admits that Kirby-Smith furnished labor and materials to AOK. AOK denies the remaining allegations in paragraph 11.

12. Denied.

13. Denied.

14. Denied.

15. Denied.

16. Denied.

MATTERS CONSTITUTING AVOIDANCE OR AFFIRMATIVE DEFENSE

17. Plaintiff's Petition fails to state a cause of action against AOK.

18. Plaintiff is not the real party in interest.

19. Plaintiff's claims are barred by the doctrines of waiver, laches and estoppel.

WHEREFORE, Defendant AOK prays that Plaintiff take nothing by reason of its Petition, and for AOK's costs incurred in defending Plaintiff's Petition, including reasonable attorney fees, and for such other and further relief to which the Court finds AOK to be entitled.

Warren F. Bickford

Warren F. Bickford, OBA #773
FELLERS, SNIDER, BLANKENSHIP,
BAILEY & TIPPENS, P.C.
100 North Broadway, Suite 1700
Oklahoma City, Oklahoma 73102-8820
Telephone: (405) 232-0621
Facsimile: (405) 232-9659
wbickford@fellerssnider.com

**Attorneys for Defendant,
AOK Construction, LLC**

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing instrument forwarded via regular U.S. mail on May 22, 2009, to the following counsel of record:

Clay P. Booth, Esq.
Kline, Kline, Elliott & Bryant, P.C.
720 N.E. 63rd Street
Oklahoma City, OK 73105-6405

Attorneys for Plaintiff

James K. Larimore, Esq.
Jennifer K. Christian, Esq.
Durbin, Larimore & Bialick
920 N. Harvey
Oklahoma City, OK 73102-2610

**Attorneys for Defendant,
Continental Energy Services, L.L.C.**

Warren F. Bickford

Warren F. Bickford

485461

FILED IN THE DISTRICT COURT
OKLAHOMA COUNTY, OKLA.

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

MAY 27 2009

PATRICIA PRESLEY, COURT CLERK
by DEPUTY



KIRBY-SMITH MACHINERY, INC.,

Plaintiff,

vs.

AOK CONSTRUCTION, LLC, and
CONTINENTAL ENERGY SERVICES, LLC

Defendants.

)
)
)
) Case No. CJ-2009-3493
)
)
)
)

**ANSWER OF DEFENDANT CONTINENTAL ENERGY SERVICES LLC
TO PLAINTIFF'S FIRST AMENDED PETITION**

COMES NOW the Defendant, Continental Energy Services, LLC ("CES"), and for its Answer to the First Amended Petition (the "Petition") filed herein by the Plaintiff, Kirby-Smith Machinery, Inc. ("Kirby-Smith"), denies, generally and specifically, each and every material allegation thereof, and, in addition, alleges and states as follows (paragraph references herein correspond to the paragraph numbers of the First Amended Petition):

1. CES is without knowledge sufficient to permit to admit or deny the allegations of paragraph 1 of the Petition and said allegations are therefore denied.
2. CES is without knowledge sufficient to permit to admit or deny the allegations of paragraph 2 of the Petition and said allegations are therefore denied.
3. CES is without knowledge sufficient to permit to admit or deny the allegations of paragraph 3 of the Petition and said allegations are therefore denied.
4. CES adopts and incorporates herein by reference the responses to paragraphs 1 - 4 of the Petition.
5. Denied.
6. Denied.

7. Denied.
8. Denied.
9. Denied.
10. Denied.
11. Denied.
12. Denied.
13. Denied.
14. Denied.
15. Denied.
16. Denied.

MATTERS CONSTITUTING AFFIRMATIVE DEFENSE AND AVOIDANCE

17. Plaintiff is not the real party in interest.
18. CES has no contractual or other relationship with Kirby-Smith.
19. Plaintiff's Petition fails to state a cause of action against CES.
20. Plaintiff's Petition is barred by the statute of frauds.
21. Plaintiff's Petition is by the doctrines of waiver, laches and estoppel.

WHEREFORE, having fully answered, CES prays that Kirby-Smith take nothing by reason of its Petition, and for CES's costs incurred in defending this action, including a reasonable attorney's fee, and for such other and further relief to which the Court finds CES entitled in the premises.

DURBIN, LARIMORE & BIALICK

By: 

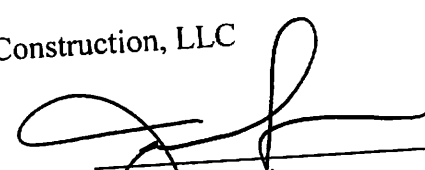
James K. Larimore, OBA #5244
Jennifer K. Christian, OBA #21628
920 North Harvey
Oklahoma City, OK 73102-2610
Telephone: (405) 235-9584
Telefax: (405) 235-0551
Attorneys for the Defendant Continental
Energy Services, L.L.C.

CERTIFICATE OF MAILING

This is to certify that on this 27 day of May, 2009, a true and correct copy of the above and foregoing was mailed, postage prepaid, to the following named counsel of record, to-wit:

Clay P. Booth, OBA #11767
Kline, Kline, Elliott & Bryant, P.C.
720 NE 63rd Street
Oklahoma City, OK 73105-6405
Telephone: (405) 848-4448
Facsimile: (405) 842-4539
Attorney for Plaintiff

Warren F. Bickford, OBA #773
Fellers, Snider, Blankenship, Bailey & Tippens
100 N. Broadway, Suite 1700
Oklahoma City, OK 73102-8820
Telephone: (405) 232-0621
Facsimile: (405) 232-9659
Attorney for Defendant AOK Construction, LLC


James K. Larimore
Jennifer K. Christian

U:\3054\002\Answer CES.wpd

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
 STATE OF OKLAHOMA

FILED IN THE DISTRICT COURT
 OKLAHOMA COUNTY, OKLA.

MAY 28 2009

Kirby-Smith Machinery, Inc.,

Plaintiff,

v.

AOK Construction, LLC, and
 Continental Energy Services, LLC,

Defendants.

PATRICIA PRESLEY, COURT CLERK
 by [Signature] DEPUTY

Case No. CJ-2009-3493

**AGREED ORDER AUTHORIZING ISSUANCE OF PLAINTIFF'S PREJUDGMENT
 GARNISHMENT WITHOUT AN UNDERTAKING**

NOW on this 28 day of May, 2009, the above-captioned case comes before this Court pursuant to the *Notice of Prejudgment Garnishment* filed on May 1, 2009 ("Notice"), by Plaintiff, Kirby-Smith Machinery, Inc. ("Plaintiff" or "KSMI"), and the *Objection to Issuance of Pre-Judgment Garnishment Summons* filed on May 11, 2009 ("Objection"), by Defendants, AOK Construction, LLC ("AOK") and Continental Energy Services, LLC ("CES") (collectively, "Defendants"). Plaintiff appears by counsel, Clay P. Booth of the firm Kline, Kline, Elliott & Bryant P.C., and Defendants appear by counsel, James K. Larimore of the firm Durbin, Larimore & Bialick.

After reviewing the record in this cause and being duly advised in the premises, the Court finds and concludes as follows:

1. On May 1, 2009, KSMI filed a *Garnishment Affidavit* with the District Court of Oklahoma County, pursuant to 12 O.S. § 1172, seeking the issuance of a prejudgment garnishment summons to be issued to Ritchie Bros. Auctioneers (America), Inc., f/k/a Ritchie Bros. Auctioneers, Inc.
2. KSMI's Notice complies with 12 O.S. § 1172(1)(A)(1) and was properly served on AOK and CES.
3. AOK and CES' Objection was filed with written agreement and consent of the parties and is timely.

4. AOK and CES agree and consent to the issuance of a prejudgment garnishment summons as requested in KSMI's Notice to the Garnishee, Ritchie Bros. Auctioneers (America), Inc., f/k/a Ritchie Bros. Auctioneers, Inc., pursuant to 12 O.S. § 1172(1)(A)(3).

5. AOK and CES expressly and specifically waive and relinquish the undertaking under 12 O.S. § 1172(1)(A)(3) and (4), and any and all statutory rights and benefits of or to an undertaking under § 1172(1)(A)(3) and (4), and AOK and CES agree and consent to the issuance by this Court of the prejudgment garnishment summons to Garnishee, Ritchie Bros. Auctioneers (America), Inc., f/k/a Ritchie Bros. Auctioneers, Inc.

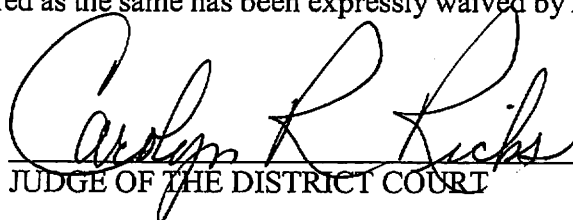
6. Venue and jurisdiction are proper.

7. By entering into this Agreed Order, AOK and CES do not waive any claim or defense regarding KSMI's causes of action, other than defenses of improper venue and lack of jurisdiction.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the foregoing findings and conclusions are adopted and incorporated by reference as the orders, adjudications, and decrees of this Court as if fully set forth herein.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that pursuant to 12 O.S. § 1172(1)(A)(3), the Court shall issue a prejudgment garnishment summons as requested in KSMI's Notice to the Garnishee, Ritchie Bros. Auctioneers (America), Inc., f/k/a Ritchie Bros. Auctioneers, Inc.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that no undertaking or bond as provided for under 12 O.S. § 1172(1) is required as the same has been expressly waived by AOK and CES.

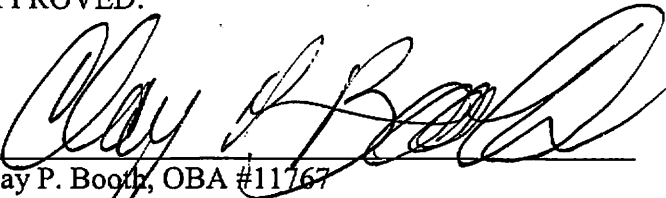


JUDGE OF THE DISTRICT COURT

Kirby-Smith Machinery, Inc. v. AOK Construction, LLC, et al.
Oklahoma County District Court, Case No. CJ-2009-3493
Agreed Order Authorizing Issuance of Plaintiff's
Prejudgment Garnishment Without an Undertaking

3890-088

APPROVED:



Clay P. Booth, OBA #11767

- for the firm -

KLINE, KLINE, ELLIOTT & BRYANT, P.C.

720 NE 63rd Street

Oklahoma City, OK 73105-6405


Telephone: (405) 848-4448

Facsimile: (405) 842-4539

Attorneys for Plaintiff,

Kirby-Smith Machinery, Inc.

APPROVED:



James K. Larimore, OBA #5244

Jennifer K. Christian, OBA #21628

DURBIN, LARIMORE & BIALICK

920 North Harvey

Oklahoma City, OK 73102-2610

Telephone: (405) 235-9584

Facsimile: (405) 235-0551

Attorneys for Defendants,

AOK Construction, LLC,

and Continental Energy Services, LLC

Kirby-Smith Machinery, Inc. v. AOK Construction, LLC, et al
Oklahoma County District Court, Case No. CJ-2009-3493

Agreed Order Authorizing Issuance of Plaintiff's
Prejudgment Garnishment Without an Undertaking

3890-088

Rm

FILED IN THE DISTRICT COURT
OKLAHOMA COUNTY, OKLA.

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

JUN - 3 2009

PATRICIA PRESLEY, COURT CLERK
by  DEPUTY

Kirby-Smith Machinery, Inc.,

Plaintiff,

v.

Case No. CJ-2009-3493

AOK Construction, LLC, and
Continental Energy Services, LLC,

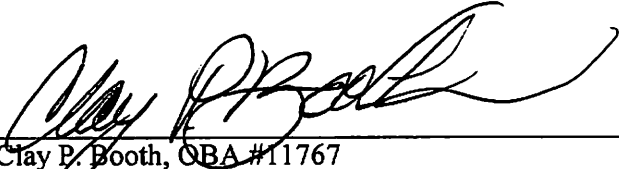
Defendants.

**CERTIFICATE OF SERVICE OF AGREED ORDER AUTHORIZING ISSUANCE OF
PLAINTIFF'S PREJUDGMENT GARNISHMENT WITHOUT AN UNDERTAKING**

I certify that on the 2nd of June, 2009, a true and correct copy of the *Agreed Order Authorizing Issuance of Plaintiff's Prejudgment Garnishment Without an Undertaking*, filed on May 28, 2009, was mailed by regular, first class United States mail, postage fully pre-paid, to the following:

James K. Larimore, OBA #5244
Jennifer K. Christian, OBA #21628
DURBIN, LARIMORE & BIALICK
920 North Harvey
Oklahoma City, OK 73102-2610
Telephone: (405) 235-9584
Facsimile: (405) 235-0551
Attorneys for Defendants,
AOK Construction, LLC,
and Continental Energy Services, LLC

Warren F. Bickford
Fellers, Snider, Blankenship,
Bailey & Tippens, P.C.
100 North Broadway, Suite 1700
Oklahoma City, OK 73102


Clay P. Booth, OBA #11767
- for the firm -
KLINE, KLINE, ELLIOTT & BRYANT, P.C.
720 NE 63rd Street
Oklahoma City, OK 73105-6405
Telephone: (405) 848-4448
Facsimile: (405) 842-4539
Attorney for Plaintiff, Kirby-Smith Machinery, Inc.

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

Kirby-Smith Machinery, Inc.,

Plaintiff,

v.

Case No. CJ-2009-3493

AOK Construction, LLC, and
Continental Energy Services, LLC,

Defendants.

and

Ritchie Bros. Auctioneers (America), Inc.,
f/k/a Ritchie Bros. Auctioneers, Inc.,

Garnishee.

FILED IN THE DISTRICT COURT
OKLAHOMA COUNTY, OKLA.
JUN 10 2009
PATRICIA PREBBLEY, COURT CLERK
DEPUTY

NONCONTINUING AND GENERAL GARNISHEE'S ANSWER/AFFIDAVIT

STATE OF NEBRASKA)
COUNTY OF LANCASTER) SS

JAMES J OLNSTEAD, being duly sworn deposes and says:
(Affiant)

IF GARNISHEE IS AN INDIVIDUAL:

That he/she is the garnishee herein. That he/she does business in the name of _____

IF GARNISHEE IS A PARTNERSHIP:

That he is a member of _____, a partnership
composed of garnishee and _____

IF GARNISHEE IS A CORPORATION:

That he is the SECRETARY, of RITCHIE BROS. AUCTIONEERS (AMERICA) INC
(Official Title) (Garnishee)

a corporation, organized under the laws of the State of WASHINGTON

Garnishee or _____, on behalf of garnishee having been served with a
garnishment summons on the 8TH day of JUNE, 2009, and having knowledge of the facts and being
sworn, states:

1. At the time of the service of the garnishment summons, or upon the date it became effective, the garnishee was not indebted to Defendants for any amount of money nor did the garnishee have possession or control of any property, money, goods, chattels, credits, negotiable instruments or effects belonging to Defendants or in which the Defendants had an interest because the employee/individual/Defendants were:

- ☐ Not Employed
☐ Employed, but no earnings due ("earnings" means any form of payment to an individual including, but not limited to, salary, wages, commission, or other compensation, but does not include reimbursements for travel expenses for state employees)—specify reason: _____
☐ Garnishee did not have in its possession or control any of said money or property, goods, chattels, credits, negotiable instruments or effects belonging to Defendants or in which Defendants had an interest.
☒ Other, specify: N/A

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

Kirby-Smith Machinery, Inc.,

Plaintiff,

v.

AOK Construction, LLC, and
Continental Energy Services, LLC,

Defendants.

and

Ritchie Bros. Auctioneers (America), Inc.,
f/k/a Ritchie Bros. Auctioneers, Inc.,

Garnishee.

Case No. CJ-2009-3493

FILED IN THE DISTRICT COURT
OKLAHOMA COUNTY, OKLA.

MAY - 1 2009

GARNISHMENT AFFIDAVIT
(12 O.S. Supp. 2004 § 1172, as amended)

PATRICIA PRESLEY, COURT CLERK
by _____
DEPUTY

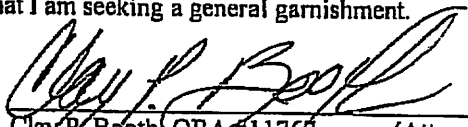
STATE OF OKLAHOMA)

COUNTY OF OKLAHOMA)

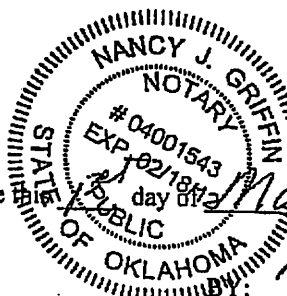
SS:

1, Clay P. Booth, being duly sworn, states as follows:

1. That he is the attorney for the Plaintiff, Kirby-Smith Machinery, Inc., in the above-styled case;
2. **For Prejudgment Garnishment Only:** That AOK Construction, LLC, and Continental Energy Services, LLC, the Defendants in the above-styled cause, is indebted to me in the amount of \$730,683.24, on my original claim, over and above all offsets.
3. **For Postjudgment Garnishment Only:** That _____, the Judgment Debtors and Defendants in the above-styled cause, is indebted to me as follows:
4. That I believe that the above-named Garnishee, Ritchie Bros. Auctioneers (America), Inc., f/k/a Ritchie Bros. Auctioneers, Inc., is indebted to or has property within its possession or under its control, which is not by law exempt from seizure or sale upon execution, belonging to Defendants.
5. That I am *not* seeking a continuing garnishment. That I am seeking a general garnishment.

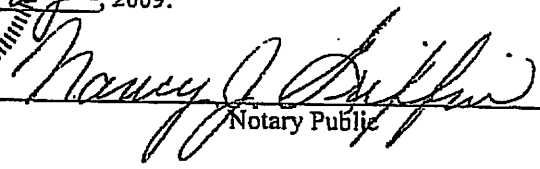

Clay P. Booth, OBA #11767 (Attorney's Lien Claimed)
- for the firm -
KLINE, KLINE, ELLIOTT & BRYANT, P.C.
720 NE 63rd Street
Oklahoma City, OK 73105-6405
Telephone: (405) 848-4448
Facsimile: (405) 842-4539
Attorney for Plaintiff, Kirby-Smith Machinery, Inc.

Subscribed and sworn to before me this 18 day of May, 2009.



My Commission Expires: 2/18/2012

My Commission Number: 04001543


Notary Public

2. At the time of service of the garnishment summons or upon the date it became effective, the garnishee was indebted to Defendants or had possession or control of the following property, money, goods, chattels, credits, negotiable instruments or effects belonging to Defendants as follows:

[] Earnings as shown on the Calculation for Garnishment of Earnings Form (on next page) which is incorporated by reference into this Answer;
 [X] Other, specify: RITCHIE BROS. AUCTIONEERS AS GARNISHEE IS HOLDING DISPUTE FUNDS OF \$783,000 BUT HAS BEEN DIRECTED BY BOTH PARTIES TO PAY SUCH MONIES TO BANK OF AMERICA.

3. Nothing has been withheld due to a prior garnishment or continuing garnishment which will expire on N/A, and is in Case No. _____ in the District Court of _____ County, Oklahoma.

4. On the 8TH day of JUNE, 2009, the garnishee mailed a copy of the Notice of Garnishment & Exemptions and Application for Hearing by first-class mail to Defendants at:

720 NE 63RD ST. OKLAHOMA CITY OK 73105-6405 6/9/09
 Street Address City/State Zip Date Mailed

or hand-delivered the same to Defendants at:

Defendants _____ Place _____

5. The garnishee makes the following claim of exemption on the part of Defendants, or has the following objections, defenses, or setoffs to Plaintiff's right to apply garnishee's indebtedness to Defendants upon Plaintiff's claim as follows:
N/A

Check here if additional pages are necessary [].

Dated this 8TH day of JUNE, 2009.

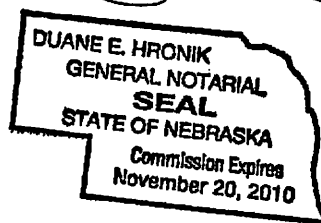
By: James J. Olnstead
 Title: SECRETARY

Subscribed and sworn to before me this 8th day of June, 2009.

[Signature]
 Notary Public

My Commission Expires: Nov 20, 2010

My Commission Number: n/a



WHEN COMPLETED, MAIL ORIGINAL ANSWER TO:

PATRICIA PRESLEY, COURT CLERK
 409 OKLAHOMA COUNTY OFFICE BUILDING
 321 ROBERT S. KERR
 OKLAHOMA CITY, OK 73102


YOU MUST SEND YOUR CHECK FOR THE AMOUNT GARNISHED MADE PAYABLE TO THE ORDER OF THE ATTORNEY FOR PLAINTIFF WITH A COPY OF YOUR ANSWER TO THE ATTORNEY FOR PLAINTIFF:

CLAY P. BOOTH
 KLINE, KLINE, ELLIOTT & BRYANT, P.C.
 720 NE 63RD STREET
 OKLAHOMA CITY, OK 73105-6405
 ATTORNEYS FOR PLAINTIFF,
 KIRBY-SMITH MACHINERY, INC.

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

FILED IN THE DISTRICT COURT
OKLAHOMA COUNTY, OKLA.

JUN 17 2009

PATRICIA PRESLEY, COURT CLERK
by  DEPUTY

Kirby-Smith Machinery, Inc.,

Plaintiff,

v.

Case No. CJ-2009-3493

AOK Construction, LLC, and
Continental Energy Services, LLC,

Defendants,

and

Ritchie Bros. Auctioneers (America), Inc.,
f/k/a Ritchie Bros. Auctioneers, Inc.

Garnishee,

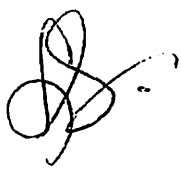
and

Bank of America, N.A.,

Intervenor.

**AGREED ORDER GRANTING BANK OF AMERICA, N.A.'S MOTION TO
INTERVENE AND AUTHORIZING DISBURSEMENT OF GARNISHED FUNDS**

NOW on this 17 day of June, 2009, the above-captioned case comes before this Court pursuant to the *Motion to Intervene* filed on June 8, 2009 ("Motion"), by Intervenor, Bank of American, N.A. Plaintiff, Kirby-Smith Machinery, Inc. ("KSMI"), appears by counsel, Clay P. Booth of the firm Kline, Kline, Elliott & Bryant P.C.; Defendant, AOK Construction, LLC ("AOK"), appears by counsel, Warren F. Bickford of the firm Fellers, Snider, Blankenship, Bailey & Tippins; Defendant, Continental Energy Services, LLC ("CES"), appears by counsel, James K. Larimore of the firm Durbin, Larimore & Bialick; and Intervenor, Bank of America, N.A. ("BOA"),



appears by counsel

After reviewing the record in this cause and being duly advised in the premises, the Court finds and concludes as follows:

1. On April 13, 2009, KSMI commenced this case against AOK and CES seeking judgment in the amount of \$730,683.24, plus interest, costs, and attorneys' fees.

2. On May 1, 2009, KSMI filed a *Garnishment Affidavit* with the District Court of Oklahoma County, pursuant to 12 O.S. § 1172, seeking the issuance of a prejudgment garnishment summons to be issued to Ritchie Bros. Auctioneers (America), Inc., f/k/a Ritchie Bros. Auctioneers, Inc.

3. On May 1, 2009, KSMI filed its *Notice of Prejudgment Garnishment* ("Notice"), which Notice complies with 12 O.S. § 1172(1)(A)(1) and was properly served on AOK and CES.

4. On May 11, 2009, AOK and CES filed their *Objection to Issuance of Prejudgment Garnishee Summons*, which was filed with written agreement and consent of the parties and is timely.

5. On May 28, 2009, an *Agreed Order Authorizing Issuance of Plaintiff's Prejudgment Garnishment Without an Undertaking* was rendered and filed in the case, pursuant to which KSMI properly served the *Prejudgment General Garnishment Summons, Garnishment Affidavit, General Garnishee's Answer/Affidavit, Notice of Garnishment and Exemptions, Claim for Exemption and Request for Hearing*, and all pleadings and documents required by law, upon Garnishee, Ritchie Bros. Auctioneers (America), Inc., f/k/a Ritchie Bros. Auctioneers, Inc.

6. The Garnishee, Ritchie Bros. Auctioneers (America), Inc., f/k/a Ritchie Bros. Auctioneers, Inc., is indebted to or has property within its possession or under its control, which is not by law exempt from seizure or sale upon execution, belonging to AOK in the amount of

\$730,683.24, over and above all offsets ("Garnished Funds").

7. BOA is claiming a lien in and to the Garnished Funds.

8. KSMI holds and is claiming a garnishment lien in and to the Garnished Funds.

9. Counsel for the parties hereto and have reached an agreement in regard to the Motion and the Garnished Funds as referenced in paragraph 5 above, which agreement is set forth in this *Agreed Order Granting Bank of America, N.A.'s Motion to Intervene and Authorizing Disbursement of Garnished Funds* ("Agreed Order").

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the foregoing findings and conclusions are adopted and incorporated by reference as the orders, adjudications, and decrees of this Court as if fully set forth herein.


IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that BOA's Motion is granted.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Garnishee, Ritchie Bros. Auctioneers (America), Inc., f/k/a Ritchie Bros. Auctioneers, Inc, is hereby authorized and directed to disburse the Garnished Funds to BOA, subject to the following orders of this Court.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the parties' agreement, this Agreed Order or the disbursement of the Garnished funds are not, and do not constitute: (a) a waiver, relinquishment or discharge, in whole or in part, of whatever type, kind, nature, character and description, of the claimed liens of KSMI and BOA in and to the Garnished Funds; and (b) a determination or adjudication of KSMI and BOA's right, title, lien, claim or interest in and to the Garnished Funds, including the validity, priority and amount of KSMI or BOA's liens, all of which are reserved for further determination by this Court.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that notwithstanding anything

in this Agreed Order to the contrary, the Garnished Funds shall be deemed, and are, held *in custodia legis*, until the further order of this Court.



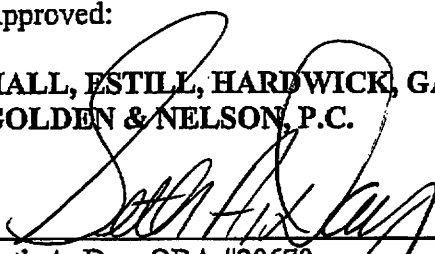
JUDGE OF THE DISTRICT COURT

Kirby-Smith Machinery, Inc. v. AOK Construction, LLC, et al.
Oklahoma County District Court, Case No. CJ-2009-3493
Agreed Order Granting Bank of America, N.A.'s
Motion to Intervene and Authorizing Disbursement
of Garnished Funds

3890-088

Approved:

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Kirby-Smith Machinery, Inc. v. AOK Construction, LLC, et al.
Oklahoma County District Court, Case No. CJ-2009-3493
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of Garnished Funds

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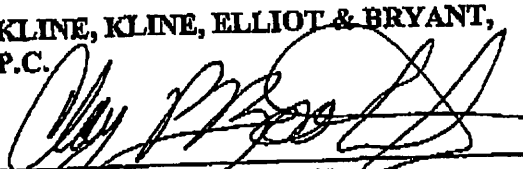
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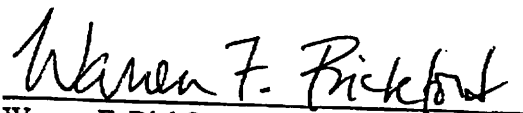
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IN THE DISTRICT COURT IN AND FOR OKLAHOMA COUNTY, OKLAHOMA

Kirby-Smith Machinery, Inc., <p style="text-align: center;">Plaintiff,</p> <p>v.</p> AOK Construction, LLC, and Continental Energy Services, LLC, <p style="text-align: center;">Defendants.</p>	No. CJ-2009-3493 (Civil relief more than \$10,000: BREACH OF AGREEMENT - CONTRACT) Filed: 04/13/2009 Judge: Ricks, Carolyn R.
---	---

Parties

AOK Construction, L.L.C. , Defendant
 Continental Energy Services, L.L.C. , Defendant
 Kirby-Smith Machinery, Inc. , Plaintiff

Attorneys

Attorney

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 OKLAHOMA CITY, OK 73102

LARIMORE, JAMES K(Bar # 5244)
 920 N Harvey
 Oklahoma City, OK 73102

Represented Parties

AOK Construction, L.L.C.,

Kirby-Smith Machinery, Inc.,

Continental Energy Services, L.L.C.,

Continental Energy Services, L.L.C.,
 AOK Construction, L.L.C.,

Events

Event

Thursday, July 16, 2009 at 13:30 PM
 JAMES LARIMORE AND JENNIFER CHRISTIAN'S MOTION TO WITHDRAW AS
 ATTNYS FOR DEFENDANT(MOD)

PartyDocket

Carolyn R.
 Ricks

Reporter

Issues

For cases filed before 1/1/2000, ancillary issues may not appear except in the docket.

Issue # 1.

Issue: BREACH OF AGREEMENT - CONTRACT (CONTRACT)

Filed by: Kirby-Smith Machinery, Inc.

Filed Date: 04/13/2009

Party Name:

Disposition Information:

Pending.

Docket

Date	Code	Count	Party	Serial #	Entry Date		
04-13-2009	TEXT	1		57162877	Apr 13 2009 4:37:06:930PM	-	\$ 0.00
			CIVIL RELIEF MORE THAN \$10,000 INITIAL FILING.				
04-13-2009	CONTRACT	-		57162879	Apr 13 2009 4:37:07:000PM	Realized	\$ 0.00
			BREACH OF AGREEMENT - CONTRACT				
04-13-2009	DMFE	-		57162880	Apr 13 2009 4:37:07:030PM	Realized	\$ 2.00
			DISPUTE MEDIATION FEE(\$ 2.00)				
04-13-2009	PFE1	-		57162881	Apr 13 2009 4:37:07:030PM	Realized	\$ 150.00
			PETITION(\$ 150.00)				
04-13-2009	PFE7	-		57162882	Apr 13 2009 4:37:07:030PM	Realized	\$ 6.00
			LAW LIBRARY FEE(\$ 6.00)				
04-13-2009	OCISR	-		57162883	Apr 13 2009 4:37:07:030PM	Realized	\$ 25.00
			OKLAHOMA COURT INFORMATION SYSTEM REVOLVING FUND(\$ 25.00)				
04-13-2009	CCADMIN	-		57162884	Apr 13 2009 4:37:07:030PM	Realized	\$ 1.00
			COURT CLERK ADMINISTRATIVE FEE ON COLLECTIONS(\$ 1.00)				
04-13-2009	CHAB	-		57162885	Apr 13 2009 4:37:07:030PM	Realized	\$ 10.00
			C.H.A.B. STATUTORY FEE(\$ 10.00)				
04-13-2009	AGVSU	-		57162886	Apr 13 2009 4:37:07:030PM	Realized	\$ 3.00
			ATTORNEY GENERAL VICTIM SERVICES UNIT(\$ 3.00)				
04-13-2009	CCADMIN03	-		57162887	Apr 13 2009 4:37:07:030PM	Realized	\$ 0.30
			COURT CLERK ADMINISTRATIVE FEE ON COLLECTIONS(\$ 0.30)				
04-13-2009	LTF	-		57162888	Apr 13 2009 4:37:07:330PM	Realized	\$ 10.00

LENGTHY TRIAL FUND(\$ 10.00)

04-13-2009	SMF	-	57162889	Apr 13 2009 4:37:07:400PM	Realized	\$ 5.00
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SUMMONS FEE (CLERKS FEE)(\$ 5.00)

04-13-2009	SMF	-	57162897	Apr 13 2009 4:37:42:650PM	Realized	\$ 5.00
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SUMMONS FEE (CLERKS FEE)(\$ 5.00)

04-13-2009	P	-	57170325	Apr 14 2009 2:00:15:050PM	-	\$ 0.00
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PETITION

 Document Available at Court Clerk's Office

04-13-2009	EAA	-	57170973	Apr 14 2009 2:30:17:260PM	-	\$ 0.00
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ENTRY OF APPEARANCE BY COUNSEL; FOR PLAINTIFF BY ATTNY CLAY BOOTH

 Document Available (#1009306652)

04-13-2009	TEXT	-	57162878	Apr 13 2009 4:37:06:970PM	-	\$ 0.00
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OCIS HAS AUTOMATICALLY ASSIGNED JUDGE RICKS, CAROLYN R. TO THIS CASE.

04-13-2009	ACCOUNT	-	57162955	Apr 13 2009 4:42:01:190PM	-	\$ 0.00
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RECEIPT # 2009-2100692 ON 04/13/2009.

PAYOR: KLINE KLINE ELLIOTT TOTAL AMOUNT PAID: \$ 217.30.

LINE ITEMS:

CJ-2009-3493: \$160.00 ON AC01 CLERK FEES.

CJ-2009-3493: \$3.00 ON AC07 ATTORNEY GENERAL VICTIM SERVICES UNIT.

CJ-2009-3493: \$6.00 ON AC23 LAW LIBRARY FEE.

CJ-2009-3493: \$1.30 ON AC31 COURT CLERK REVOLVING FUND.

CJ-2009-3493: \$2.00 ON AC64 DISPUTE MEDIATION FEES.


CJ-2009-3493: \$10.00 ON AC69 CHILD ABUSE MULTIDISCIPLINARY FEE.

CJ-2009-3493: \$25.00 ON AC79 OCIS REVOLVING FUND.

CJ-2009-3493: \$10.00 ON AC81 LENGTHY TRIAL FUND.


04-14-2009	P	-	57187874	Apr 16 2009 8:24:52:003AM	-	\$ 0.00
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FIRST AMENDED PETITION

 Document Available at Court Clerk's Office

04-15-2009	SMS	-	57221218	Apr 20 2009 9:40:07:427AM	-	\$ 0.00
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SUMMONS/PETITION /ENTRY OF APPRENECE RETURNED, SERVED: AOK CONSTRUCTION , LLC - ATTN: ANY AGENT OR OFFICER AUTHORIZED TO RECEIVE SERVICE OF PROCESS - BY DELIVERING TO BARBARA, MCCURREY - SERVICE AGENT - ON 4-15-09




 Document Available (#1009407781)







05-01-2009	GAPJ	-	57345882	May 1 2009 4:02:11:650PM	Realized	\$ 15.00
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GARNISHMENT AFFIDAVIT W/SUMMONS (POST JUDGMENT)(\$ 15.00)

05-01-2009	OCISR	-	57345883	May 1 2009 4:02:11:800PM	Realized	\$ 25.00
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OKLAHOMA COURT INFORMATION SYSTEM REVOLVING FUND(\$ 25.00)

05-01-2009	CCADMIN	-	57345884	May 1 2009 4:02:11:840PM	Realized	\$ 1.00
COURT CLERK ADMINISTRATIVE FEE ON COLLECTIONS(\$ 1.00)						
05-01-2009	CHAB	-	57345885	May 1 2009 4:02:11:970PM	Realized	\$ 10.00
C.H.A.B. STATUTORY FEE(\$ 10.00)						
05-01-2009	AGVSU	-	57345886	May 1 2009 4:02:12:050PM	Realized	\$ 3.00
ATTORNEY GENERAL VICTIM SERVICES UNIT(\$ 3.00)						
05-01-2009	CCADMIN03	-	57345887	May 1 2009 4:02:12:160PM	Realized	\$ 0.30
COURT CLERK ADMINISTRATIVE FEE ON COLLECTIONS(\$ 0.30)						
05-01-2009	NO	-	57368472	May 5 2009 12:56:54:827PM	-	\$ 0.00
NOTICE OF PREJUDGMENT GARNISHMENT						
05-01-2009	APLI	-	57368477	May 5 2009 12:57:20:357PM	-	\$ 0.00
APPLICATION TO APPOINT A RECEIVER						
05-01-2009	ACCOUNT	-	57345946	May 1 2009 4:03:24:730PM	-	\$ 0.00
RECEIPT # 2009-2114402 ON 05/01/2009. PAYOR:KLINE KLINE TOTAL AMOUNT PAID: \$54.30. LINE ITEMS: CJ-2009-3493: \$15.00 ON AC01 CLERK FEES. CJ-2009-3493: \$3.00 ON AC07 ATTORNEY GENERAL VICTIM SERVICES UNIT. CJ-2009-3493: \$1.30 ON AC31 COURT CLERK REVOLVING FUND. CJ-2009-3493: \$10.00 ON AC69 CHILD ABUSE MULTIDISCIPLINARY FEE. CJ-2009-3493: \$25.00 ON AC79 OCIS REVOLVING FUND.						
05-05-2009	A	-	57382912	May 6 2009 1:13:48:457PM	-	\$ 0.00
RESERVATION OF ADDITION TIME TO PLEAD OR ANSWER						
05-05-2009	EAA	-	57386324	May 6 2009 3:16:03:387PM	-	\$ 0.00
ENTRY OF APPEARANCE BY JAMES LARIMORE ATTN Y FOR DEFENDANT, AOK CONSTRUCTION, LLC AND CONTINENTAL ENERGY SERVICES, LLC  Document Available (#1009306102)						
05-11-2009	OBJ	-	60031954	May 27 2009 10:58:59:830AM	-	\$ 0.00
OBJECTION TO ISSUANCE OF PRE-JUDGMENT GARNISHEE SUMMONS BY ATTN Y JAMES LARIMORE  Document Available (#1009312381)						
05-22-2009	EAA	-	60097274	May 27 2009 10:58:46:350AM	-	\$ 0.00
ENTRY OF APPEARANCE BY WARREN BICKFORD ATTN Y FOR DEFENDANT, AOK CONSTRUCTION, LLC  Document Available (#1009585321)						

05-22-2009 A	-	60100565	May 27 2009 11:41:06:073PM	-	\$ 0.00
ANSWER OF DEFENDANT AOK CONSTRUCTION, LLC TO PLAINTIFF'S FIRST AMENDED PETITION BY ATTNY WARREN BICKFORD					
 Document Available (#1009312766)					
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05-27-2009 A	-	Continental Energy Services, LLC.	60112264	May 28 2009 11:54:37:203AM	- \$ 0.00
ANSWER OF DEFENDANT CONTINENTAL ENERGY SERVICES LLC TO PLAINTIFF'S FIRST AMENDED PETITION THROUGH ATTYS JAMES K. LARIMORE AND JENNIFER K. CHRISTIAN					
 Document Available (#1009585559)					
<hr/>					
05-28-2009 AGORD	-		60144554	Jun 1 2009 3:39:35:123PM	- \$ 0.00
AGREED ORDER AUTHORIZING ISSUANCE OF PLAINTIFF'S PREJUDGMENT GARNISHMENT WITHOUT AN UNDERTAKING/JUDGE RICKS					
 Document Available (#1009552257)					
<hr/>					
06-03-2009 CT	-		60172819	Jun 4 2009 9:48:43:037AM	- \$ 0.00
CERTIFICATE OF SERVICE OF AGREED ORDER AUTHORIZING ISSUANCE OF PLAINTIFF'S PREJUDGMENT GARNISHMENT WITHOUT AN UNDERTAKING					
<hr/>					
06-05-2009 MO	-		60203020	Jun 8 2009 1:11:09:280PM	- \$ 0.00
MOTION TO WITHDRAW AS ATTORNEY FOR DEFENDANT AOK CONSTRUCTION LLC					
<hr/>					
06-05-2009 MO	-		60206368	Jun 8 2009 3:54:52:970PM	- \$ 0.00
UNOPPOSED MOTION TO INTERVENE					
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06-10-2009 ATG	-		60250365	Jun 12 2009 9:03:49:550AM	- \$ 0.00
ANSWER TO GARNISHMENT BY RITCHIE BROS AUCTIONEERS(AMERICA) INC					
 Document Available at Court Clerk's Office					
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06-10-2009 ATG	-		60254388	Jun 12 2009 11:35:27:897AM	- \$ 0.00
ANSWER TO GARNISHMENT BY RITCHIE BROS AUCTIONER					
 Document Available at Court Clerk's Office					
<hr/>					
06-17-2009 AGORD	-		60320279	Jun 19 2009 9:54:22:480AM	- \$ 0.00
AGREED ORDER GRANTING BANK OF AMERICA N.A MOTION TO INTERVENE AND AUTHORIZE DISBURSEMENT OF GARNISHED FUNDS/JUDGE RICKS					
 Document Available (#1009735076)					
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06-29-2009 NOB	-		60406999	Jun 29 2009 1:47:00:687PM	- \$ 0.00
SUGGESTION OF BANKRUPTCY					
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End of Transmission.